

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RYAN C. HENRY, et al.,

Plaintiffs,

v.

Steven J. Murphy, III

No. 04-40346

**QUICKEN LOANS, INCORPORATED,
also known as Rock Financial
Corporation, et al.,**

Defendants.

/

JURY TRIAL - VOLUME XVII

Monday, March 14, 2011

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Detroit, Michigan

Monday, March 14, 2011

9:24 a.m.

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THE COURT: Okay. Everybody may sit down and relax. Welcome back.

How are our friends from Minnesota?

MR. LUKAS: Good, Judge.

THE COURT: Everybody is okay? You enjoyed your week of relaxation, Mr. Lukas?

MR. LUKAS: Yeah. I went home and got the flu from two of my kids. It was awesome. I should have stayed hermetically sealed at the Westin, like I have been for the last six weeks.

THE COURT: Exactly. Well, you might have gotten something worse there. Who knows?

Welcome to our defendants. How are the Morganroths and everybody doing?

MR. JEFFREY MORGANROTH: Fine, thank you.

MR. MAYER MORGANROTH: Fine, thank you.

THE COURT: Okay. Well, welcome back.

Let's start off with the jury instructions, and I'll go through and give you my update and my point of view, and then we can have a brief discussion and talk about a couple of other things quickly.

1 The record should reflect that the parties each filed
2 competing sets of instructions and verdict forms. As
3 everybody knows, we worked very hard last week on resolving
4 a joint packet of instructions. I was very grateful to the
5 lawyers for a two and-a-half hour session last Monday where
6 we thrashed through both parties' suggested instructions and
7 the law. The Court resolved a joint packet of instructions
8 and issued those electronically with a supporting memorandum
9 on Wednesday.

10 Pursuant to our discussion last Monday, both parties
11 filed objections and corrections electronically on Friday
12 not exceeding three pages. The Court was very grateful for
13 that guidance as well.

14 And I have now completed, based on all of that work, a
15 final set of instructions that I put in the hands of counsel
16 at 9:00 this morning, which is Monday, March 14th. I might
17 add that we made all of the corrections that we could
18 possibly make to accommodate the positions of the parties
19 while staying true to what we think is the proper charge in
20 this case.

21 Let me say the following, which is that in many cases,
22 not all, but in many, the parties come together and agree on
23 a lot of the instructions. In this case there was not a
24 tremendous amount of agreement, and while that makes it much
25 easier for the Court to come up with its own charge, it

1 makes it very, very difficult to put together a joint charge
2 that's acceptable to both sides. So, given the lack of
3 agreement, it's not surprising to the Court that there is
4 going to be some disagreement with the final charge given to
5 the jury, and I understand that. I will let you place your
6 final objections on the record, which I would ask you not to
7 go beyond what you have already said last week and what you
8 have said in writing, but anything you have in response to
9 the joint packet I gave out this morning at 9:00 would be
10 welcome.

11 Let me say on the first instance, so you know where I'm
12 coming from, we did not include a sales definition in the
13 instructions, and there is not a sales question on the form.
14 With regard to the verdict form, I am convinced that the law
15 is clear in cases such as this under the FLSA that the
16 proper test is whether or not the exemption is met, and
17 that's what we ask in the jury instruction -- or in the jury
18 verdict form.

19 In terms of sales, we have adopted the plaintiffs'
20 requested instruction as to the regulation. We didn't mess
21 around with it at all, and we quoted verbatim the
22 instruction regarding financial adviser work. If sales is a
23 primary duty, then you don't get the administrative
24 exemption, and there's plenty of room, in my view, in the
25 instructions to argue that to the jury based on the

1 plaintiffs' theory at trial, but I don't think the law
2 supports a special question on the verdict form asking
3 whether or not their primary duty was sales. The
4 instructions specifically say that, if it is, the
5 administrative exemption doesn't apply, and I would just
6 note that I made that point starting about ten days ago and,
7 notwithstanding the excellent letter and work of the
8 plaintiffs, I am convinced that the verdict form as it
9 stands is proper.

10 With regard to the definition of sales, I looked very
11 hard at that, and I don't want any trouble either way here,
12 but I was convinced by Mr. Davis' position and the research
13 that we performed to indicate that the suggested definition
14 of sales would have come from a regulation that didn't deal
15 with the administrative exemption and the regulations we
16 have at issue in this case. So, again, I deleted and
17 decided not to instruct specifically on the definition of
18 sales in the instructions with the understanding that sales
19 has a commonly understood meaning. There is plenty of
20 evidence of what the mortgage bankers here did and did not
21 do, and so you can argue accordingly to the jury.

22 Now, the final thing I will say before I turn it over
23 to Mr. Lukas is that I just cannot, I can't resolve what you
24 folks want to do in terms of the weeks. I would note last
25 Monday the parties had stipulated as to the number of weeks

1 worked, and we were going to take that off of the jury
2 verdict form. At the end of Monday's two and-a-half hour,
3 and professionally done but still contentious, discussion
4 about jury instructions the parties did not stipulate as to
5 the number of weeks worked.

6 We received a follow up a day later from Mr. Lukas'
7 office, which was appropriate, which we took action on and
8 made some decisions on, and heard that now the plaintiffs
9 had at that point agreed upon Exhibit 202 as the number of
10 weeks worked and were going to stipulate to that. So our
11 verdict form last Wednesday electronically issued eliminated
12 a column for weeks worked, but then Friday's letter seemed
13 to object that we had taken that out.

14 So I'm not sure exactly where you folks are on the
15 weeks. The plaintiffs' letter indicates that they think I'm
16 wrong that the jury should decide the number of weeks
17 worked, but I don't think I am wrong on that. I think
18 that's a matter of fact that you folks have not agreed upon,
19 and I don't think there's case law saying that the number of
20 weeks worked per testifying plaintiff or overall as
21 represented by those testifying plaintiffs to the remainder
22 of the plaintiffs who have filed is not a factual question,
23 and whereas I would be glad to take it up as a matter to be
24 resolved by the Court after trial should the parties be able
25 to agree on an exhibit or a general standard for what the

1 weeks are, absent that sort of stipulation, I think the jury
2 should come to a conclusion on the number of weeks worked
3 both by the testifying plaintiffs and those as
4 representative of the ones who didn't testify.

5 My understanding as of last Wednesday is that you had
6 stipulated to Defense Exhibit 202. Therefore, we removed
7 column three from the verdict form, and I guess what I'm
8 trying to say is I don't understand what the plaintiffs'
9 last letter on Friday said about putting an additional table
10 in as to the weeks for the plaintiffs because I thought you
11 had agreed on that.

12 With that in mind, I have a number of other things I
13 would like to take up before closing argument, but those are
14 the things I would like to note for the record prior to
15 hearing from you on instructions. I have four other areas
16 where you haven't come to agreement. We have done the best
17 that we could, but I'll respond after you make your
18 statements if you want to.

19 All right. Mr. Lukas, go ahead.

20 **MR. LUKAS:** Thank you, Judge. I think, you are
21 right, Your Honor, we have worked -- we do appreciate the
22 hard work you have put into this. The parties have worked
23 hard on it. We have looked at it real heard. We have got
24 plenty in the record, I think, that preserves objections.

25 There are two things I would note. One is the new

1 special verdict form has added some language in Paragraph 3
2 about if you decide you cannot draw any conclusions, that
3 paragraph, that's new and we would just log an objection
4 that that's already in the jury instructions and is
5 duplicative and doesn't need to be in the special verdict
6 form.

7 **THE COURT:** All right. Thank you.

8 **MR. LUKAS:** That's new, and that's why I logged
9 that.

10 With respect to weeks worked, I think we were ships
11 passing in the night. I think we were on the same page, and
12 I think we have been on the same page all along. I am
13 actually going to turn this over to Adam Hansen over here,
14 Judge, because Adam is the one who wrote that letter to you
15 last week. That's why there weren't any swear words in it
16 or anything.

17 **THE COURT:** I was going to make a hilarious joke
18 and say that your signature appeared down below, but that
19 would seem to have come from someone who clerked for like a
20 circuit judge.

21 **MR. LUKAS:** Exactly. It was way too smart to
22 have come from my pen. So I am going to turn it over to
23 Mr. Hansen because I do think, I do think at least the Court
24 and the plaintiffs are in agreement on this.

25 **THE COURT:** All right. Go ahead, Mr. Hansen.

1 **MR. HANSEN:** I can't take credit for something
2 that doesn't have my name on it so Mr. Lukas gets all of the
3 blame for that letter.

4 I think what's been happening with weeks worked is
5 there has been somewhat of a semantic misunderstanding
6 between the parties as to what the Court was after, and we
7 didn't really have a good idea of where the defendants were
8 at on this issue until last week, and it was clear from the
9 JIG conference and from the brief filed on Wednesday that
10 for weeks worked they want to argue weeks worked in excess
11 of 40 hours, which is obviously going to be a different
12 number from total weeks employed.

13 We asked for clarification from the Court on the
14 special verdict form, and we note this morning that the
15 Court has provided that clarification in plaintiffs' favor
16 and that what the Court has really been after all along is
17 the same thing that we thought the Court has been after all
18 along, which is we want to determine the total number of
19 weeks within the relevant statutory period that the
20 plaintiffs were employed as loan officers at Quicken Loans,
21 and quite frankly, that's the only way we can make the math
22 work if you are going to take into account all weeks
23 employed on Question 2, as the special verdict form does,
24 when you calculate the average weekly hours.

25 So I think that's the source of the disagreement,

1 Your Honor. It's more of a semantic misunderstanding of
2 weeks worked, and what we would ask for this morning is, now
3 that the Court has clarified the special verdict form and
4 made it clear that what you meant, what the Court meant by
5 weeks worked is total weeks employed, that there is no more
6 factual disagreement. It is a question of fact for the
7 jury.

8 So our position is we have stipulated to their numbers
9 on D202. D202 has three subcolumns that talk about
10 different categories of weeks worked. You've got training
11 weeks, full weeks and partial weeks. Our position is to get
12 total weeks of employment you just tally up those
13 three numbers from those three columns.

14 And, you know, to the extent the jury needs to do that
15 math, that's simple addition, well, it's a question of fact
16 and, sure, they can do it. So I guess our position this
17 morning is, now that the special verdict form has been
18 clarified to support our position, we would, once again, ask
19 defendants to stipulate to total weeks being the sum of the
20 three columns in their exhibit, and to the extent they won't
21 stipulate, we think that Your Honor should decide the
22 question as a matter of law because there's really not a
23 whole lot else to argue for total weeks of employment and no
24 reasonable jury could conclude otherwise.

25 **THE COURT:** All right. I am inclined to agree

1 with your point and will certainly hear from Mr. Morganroth,
2 but just so we are on board with each other, if I agree with
3 what you just said and we can't pin down a stipulation to
4 make what you just said agreeable to everybody, then I leave
5 the verdict form as is. If we do agree that the total
6 number of weeks worked as a mortgage banker is reflected in
7 the three columns of Defendants' 202, I take that column out
8 and now I'm going to compute R and W post verdict.

9 **MR. HANSEN:** That's correct, if we have a
10 stipulation on the number of weeks, and under the formula
11 that the Court laid out in its order on Wednesday for hours
12 of overtime per week, that factor is where all of the
13 fighting is going to take place. For hours of overtime
14 worked per week, we'll fight about vacation and chicken
15 nugget eating contests and the rest of it.

16 Weeks worked should be very uncontroversial, weeks
17 employed. That's just going to be the sum of those
18 three columns.

19 And I guess my additional point, Your Honor, is that
20 even if they won't stipulate to that we don't think there's
21 any factual basis to argue anything different. They want to
22 argue total weeks worked in excess of 40 hours. That ship
23 has sailed. The Court has made it clear it's total weeks of
24 employment within the relevant statutory period, and so we
25 don't really see a basis to look at it any different than

1 the way we are looking at it.

2 **THE COURT:** All right. Well, that's what I
3 thought as well.

4 All right. What else from Mr. Hansen and Mr. Lukas?
5 Anything?

6 **MR. LUKAS:** No, that's -- what he said.

7 **THE COURT:** All right, good. All right. That's
8 what I thought I read in the letter that you signed,
9 Mr. Lukas.

10 It's interesting. We were down in Cincinnati last
11 week, and as usual, whenever we are down there we learn
12 firsthand how much we rely on the brilliance of these young
13 people who work so hard, and that's true of my law clerks
14 and I know it's true of our associates as well. So
15 thank you both very much for that.

16 Let's move to Mr. Morganroth, and good morning, sir.

17 **MR. JEFFREY MORGANROTH:** Good morning, Your Honor.

18 **THE COURT:** Any response and anything that you
19 would like to guide the Court on at this time is
20 appreciated.

21 **MR. JEFFREY MORGANROTH:** Thank you, Your Honor.

22 I think we have put in the record both during the
23 hearing on March 8th as well as -- or March 7th, plus the
24 letters that have been circulated March 8th and March 11th,
25 in terms of any objections that we have.

1 I would like to take up this last issue on the verdict
2 form. What is it that the jury is supposed to be
3 determining? They are supposed to be determining, if there
4 is liability, how many hours in excess of 40 each plaintiff
5 worked and for how many weeks. It's not -- the question is
6 not how many weeks they worked. The question is how many
7 weeks they worked in excess of 40 hours.

8 If someone works 40 weeks, but they only had overtime
9 for two weeks, they can only recover for those two weeks.
10 They don't get to recover for 40 weeks. So the question on
11 the verdict form is, in our view, misleading and prejudicial
12 because it suggests that if the jury finds liability --

13 **THE COURT:** Wait a minute. Specify the question.

14 **MR. JEFFREY MORGANROTH:** Oh, I'm sorry, the
15 question that Mr. Hansen and Mr. Lukas were talking about,
16 the average hours of overtime worked per week that they
17 worked.

18 **THE COURT:** Yeah.

19 **MR. JEFFREY MORGANROTH:** So if the question to the
20 jury is find out how many hours or determine how many hours
21 they worked in excess of 40 and then just plug in how many
22 weeks they were employed, that's prejudicial because they
23 have to decide how many of those weeks that the plaintiffs
24 were employed that they actually worked in excess of
25 40 hours.

1 So if you look at Exhibit 202, D202, it has full weeks
2 in there. That's a column where each plaintiff worked those
3 number of weeks for a full week.

4 Then there are two other columns, weeks in training,
5 and the testimony by virtually every plaintiff was that they
6 didn't work overtime during their weeks in training. So if
7 that's included in the weeks worked, then the jury is not
8 getting -- able to make their decision as to whether
9 overtime was worked during those four weeks, which most of
10 the plaintiffs admitted they didn't work overtime. They
11 can't recover anything for those four weeks.

12 Then the last column is partial weeks. Partial weeks
13 is defined as working less than three days. So if someone
14 worked less than three days, they can't have overtime,
15 there's not enough hours, unless they worked 24 hours, and
16 no one testified they worked 24 hours.

17 So Mr. Hansen's comment that you add up three columns
18 and that is what should be plugged into the jury verdict
19 form and the verdict if in fact there is liability, that is
20 completely wrong. What the jury has to determine is how
21 many weeks were worked in excess of 40, not how many weeks
22 they were employed, and that's why this exhibit was broken
23 down that way, because there are certain weeks that it's
24 impossible for the plaintiffs to have worked overtime even
25 if they were employed.

1 And for that reason we sent the letter, Your Honor,
2 requesting that the verdict form be adjusted so that the
3 jury can determine, not only how many weeks they were
4 employed, but of those weeks how many weeks they actually
5 worked in excess of 40 hours. And that's what we were
6 talking about last week I believe it was March 7th.

7 We can stipulate apparently when they stipulate to
8 Exhibit D202 how many total weeks of employment, but that
9 doesn't get to the real question that the jury has to
10 decide, and that is of those weeks how many did each
11 plaintiff work overtime, work in exercise of 40 hours.

12 Just because they were employed, and even if there is a
13 determination that they didn't satisfy the administrative
14 exemption, doesn't mean that every single week each
15 plaintiff worked in excess of 40 hours. We have put in
16 a lot of evidence to that effect, including weeks where they
17 worked partial time where they couldn't have worked
18 40 hours, including training where they testified that they
19 did not work in excess of 40 hours. So that's where we have
20 this issue.

21 And, in terms of stipulation of Exhibit D202, I'm not
22 sure, when is that going to be shared with the jury? Is
23 that part of the instructions?

24 **THE COURT:** What's your question, when they get
25 the verdict form?

1 **MR. JEFFREY MORGANROTH:** No, Exhibit D202, if we
2 have a stipulation on that, is that being shared with the
3 jury?

4 **THE COURT:** The stipulation itself?

5 **MR. JEFFREY MORGANROTH:** Yes.

6 **THE COURT:** No. I am at sea on that because I
7 didn't know whether you guys were going to agree or not
8 agree so I didn't put anything in the instructions.

9 I assume if we go past this point and you tell me that
10 you're fine and agree to Mr. Hansen's construction of what
11 D202 says that Mr. Lukas can tell the jury his belief in
12 that regard and you won't make it a factual issue. That's
13 how I would --

14 **MR. JEFFREY MORGANROTH:** Well, it's a factual
15 issue, first of all, just on D202. We can stipulate that
16 those are the right numbers, but they are going to argue
17 that you have to add all of these things up and that equals
18 the total amount of weeks in which each plaintiff worked
19 overtime.

20 But that's not what D202 means. D202 is simply the
21 full weeks that they were employed, the partial weeks where
22 they couldn't possibly have worked overtime in which they
23 were employed, and the weeks they were in training, which
24 many of the plaintiffs admitted they didn't work overtime.

25 **THE COURT:** All right. Let me ask you this. Do

1 you agree with me and Mr. Hansen -- or I should say
2 Mr. Hansen that the three columns totaled up reflect the
3 total number of weeks worked by the plaintiffs at
4 Quicken Loans?

5 **MR. JEFFREY MORGANROTH:** The total number of weeks
6 worked?

7 **THE COURT:** Yeah. D202, if you take those
8 three columns that you just mentioned, that would give all
9 of us the universe of how long, how many weeks these folks
10 were employed there, right?

11 **MR. JEFFREY MORGANROTH:** I agree with that.

12 **THE COURT:** All right.

13 **MR. JEFFREY MORGANROTH:** The problem though is
14 that doesn't tell anyone how many of those weeks the
15 plaintiffs actually worked in excess of 40 hours, and that's
16 the jury question that we want the jury to determine, okay,
17 from these number of weeks how many weeks do you find, if
18 you get to that issue, that the plaintiffs worked in excess
19 of 40. And the only way to, to determine that is to look at
20 the evidence.

21 So you've got a column on partial weeks. I suggest
22 that it's impossible for any of the plaintiffs to have
23 worked more than 40 hours during these partial weeks.

24 The weeks in training, we have specific admissions from
25 many of the plaintiffs that they did not work in excess of

1 40 hours. They can't receive overtime for that when they
2 have already admitted, but if you put it in the way the
3 verdict form goes, they would get overtime even though they
4 have admitted that they didn't work in excess of 40 hours.

5 And then they are other issues that we would want to be
6 adjusting in terms of time off, in terms of breaks, in terms
7 of play time, fun time and activities at Quicken Loans that
8 they participated in.

9 So we would say you take the total amount of those
10 weeks and then the jury has to determine how many of those
11 weeks they would subtract out in which each plaintiff could
12 not have or did not work in excess of 40 hours, and that's
13 the question that we need to have answered.

14 **THE COURT:** All right. Anything else?

15 **MR. JEFFREY MORGANROTH:** No, Your Honor.

16 **THE COURT:** Okay. I might take a recess here, but
17 let me just say this so I can give you some guidance since
18 we are going to start with the jury pretty soon. My sense
19 is that, with all due respect, Mr. Morganroth, I think you
20 are asking me to ask the jury too much. It seems to me that
21 the specific number of weeks for them to find that overtime
22 was worked or not worked is not the relevant test and it's
23 not important for them to decide.

24 What they need to do, I think, is to average out hours
25 of overtime over both weeks that they worked overtime and

1 workweeks that they didn't, and I think that they will have
2 ample opportunity to do that both from the agreement that
3 you have reached with the plaintiffs as well as from the
4 evidence that you have adduced in the defense case as well
5 as from what I know or sense you are going to argue as a
6 factual matter in closing arguments -- or I should say your
7 interpretation of the facts in closing arguments. So I'm
8 inclined to leave the verdict form alone.

9 How many weeks the plaintiffs actually worked I don't
10 think we can hold the plaintiffs' proofs to absent accurate
11 records from Quicken, which don't exist. So I think it
12 would be too much to ask the jury to be as specific as
13 Quicken wants them to be. They can average out partial
14 weeks with overtime weeks, mark down the award accordingly,
15 and Quicken will have ample opportunity to argue its theory,
16 which I think is entirely correct, that the plaintiffs
17 clearly did not work overtime every week that they were
18 employed there because some were training, some were
19 vacations, some were whatever, but I think absent records
20 Mr. Lukas' opportunity and the Court's question of the
21 jurors to ascertain from them what they think is an average
22 is appropriate and the best we can do, all right?

23 So that's where I am on that.

24 **MR. JEFFREY MORGANROTH:** And just to address that
25 last point, the problem is that under the statute it's week

1 by week per week and each workweek is a separate claim. So,
2 for instance, if the jury is averaging, and let's just make
3 this simple, for two weeks, and week one there is 40 hours
4 that the plaintiffs worked and week two is 60 hours, and if
5 they average that, say 50 hours, and just plug in two weeks,
6 now they are receiving overtime for two weeks when in fact
7 they should only receive overtime for the second week. You
8 can't average the two in terms of the number of weeks.

9 You may be able to come up with an average in terms of
10 the number of hours that someone worked overtime over a span
11 of time, but not the number of weeks, because what happens
12 in that hypothetical is you have just doubled the damages by
13 averaging two weeks when only one week would be applicable.

14 **THE COURT:** Okay.

15 All right. I understand your position. I guess I
16 don't see them as separate claims. I see this as more a
17 global claim under the statute.

18 **MR. JEFFREY MORGANROTH:** Well, what happens is the
19 statute of limitations runs on each workweek based on the
20 payment. So that's one of the reasons why it's a separate
21 claim. They can't pursue a claim when the statute runs on
22 one week of pay.

23 **THE COURT:** Okay.

24 **MR. JEFFREY MORGANROTH:** After two years passes.
25 But then you have the next week, and the next week they

1 would be able to recover damages if in fact they could prove
2 their case.

3 **THE COURT:** Okay. The objection is noted.

4 I'm going to go with what I just said, which is to say
5 that my inclination of the agreement between parties is that
6 D202, the three columns, adds up to, and the parties are
7 agreed that, those numbers reflect the total number of weeks
8 worked by each plaintiff at Quicken Loans during the time
9 period at trial.

10 You can proceed on the presumption that the Court has
11 accepted your agreement and stipulation to that, but I'm not
12 going to instruct the jury that you have stipulated to that,
13 nor am I going to introduce any other evidence as to that
14 stipulation, but it seems to me you have agreed on the
15 columns in D202 as reflecting the total numbers of weeks
16 worked.

17 Notwithstanding that, Mr. Morganroth, as a factual
18 position that he just stated, Mr. Lukas, you should be aware
19 that he's going to argue that, but my overall finding is
20 that, as reflected on this verdict form -- and I think
21 correctly based on all of the work that we have done and
22 having heard from both parties now -- that the specific
23 number of weeks worked overtime is not going to be required
24 to be proven and I'm going to allow the jury to average out
25 the hours of overtime over both overtime and non-overtime

1 weeks.

2 And I know Mr. Morganroth disagrees with that and he
3 just told me why, but I have got to decide one way or the
4 other and that's what I have decided. We are not here to
5 make everybody happy unfortunately. Okay?

6 All right. I looked closely at the issue of how we are
7 going to argue here, and we are going to have Mr. Lukas go
8 first, Mr. Morganroth is going to go second, and in my
9 discretion I will allow a brief rebuttal by Mr. Lukas to
10 speak only to the things that Mr. Morganroth has said, no
11 sandbagging, as you well know.

12 I think most of the time, Mr. Lukas, I don't want to
13 guess at this, but I think most of the time you and your
14 colleagues that you have tried cases with in the past have
15 probably agreed upon certain issues that you and Quicken
16 have not agreed on here. So I think the burden is yours.
17 You should go first. Mr. Morganroth then has the burden of
18 establishing the administrative exemption by a preponderance
19 of the evidence, as the instructions say, but then, given
20 the overall burden in establishing the case, which Quicken
21 has not agreed to, the plaintiff should get a brief rebuttal
22 not to exceed 10 or 15 minutes, okay?

23 So are we agreed on two hours per side roughly,
24 Lawyers? Is that what you are thinking?

25 **MR. LUKAS:** Yeah, we will be under two.

1 **MR. JEFFREY MORGANROTH:** We had prepared for the
2 two and-a-half. I'm not sure how long we will be going.

3 **THE COURT:** Okay. That's fine, that's fine.

4 **MR. JEFFREY MORGANROTH:** So do we get a
5 surrebuttal on the administrative exemption?

6 **THE COURT:** No, no surrebuttal, okay? Mr. Lukas
7 gets two to two and-a-half hours, Mr. Morganroth gets
8 two and-a-half hours, and then Mr. Lukas gets a 10- to
9 15-minute rebuttal. That's how we are going to go, and then
10 I'm going to instruct the jury after that. All right?

11 **MR. LUKAS:** Okay.

12 **THE COURT:** Which leads to my next point, which I
13 will say to the courtroom at large. I have been in a lot of
14 trials and I understand there is a lot at stake, and we have
15 plaintiffs who are here to support their view of the case,
16 we have executives and others here from Quicken Loans, and
17 we have observers who want to watch the lawyers. If we go
18 directly from Mr. Lukas' rebuttal into instructions, which
19 is quite likely, I don't want any mass exodus here, okay?
20 It's very distracting and I think disrespectful to the
21 jurors because it says we come to watch our lawyers and then
22 we're bailing out.

23 If people have to leave, I understand that you have to
24 leave, I understand that it's a public courtroom and I'm not
25 going to put up any bars on the doors, but I don't want, you

1 know, 50 people leaving the courtroom after Mr. Lukas sits
2 down and the jury wondering what the heck is going on here.
3 And I will, I will enforce that as necessary.

4 We have spoken, not me, but Carol, has spoken with the
5 jury. They are in a very good mood. I think they are eager
6 to get the case. We have explained to them that,
7 notwithstanding their timely arrivals at 8:30, we had some
8 work to do on jury instructions and I think they are fine
9 with the delay, but they are expecting to hear from us soon.

10 So, with that in mind, anything from either lawyer
11 before we get down to business?

12 **MR. LUKAS:** I just have a Court set of the slides
13 that we are going to be showing, but that's all.

14 **THE COURT:** Just give those to Mr. Gerardi, and
15 we'll be ready to go. All right?

16 **MR. LUKAS:** Sounds good, Judge.

17 **THE COURT:** All righty. Good luck to you both,
18 and thanks for all of the hard work. I think we are ready
19 to go.

20 Carol, why don't you bring in the jury, and we'll go to
21 our closing arguments.

22 **MR. LUKAS:** Judge, can we get a new version -- I
23 wanted to go through the special verdict form with the jury
24 so could we have the form that . . .

25 **THE COURT:** Tell them to hang on, tell them to

1 hang on.

2 Yeah, we'll take a brief recess and get a final verdict
3 form for your use, okay?

4 **MR. LUKAS:** Thanks, Judge.

5 **THE COURT:** All right. Three-minute recess.
6 We'll be right back. You may all be seated. We are in
7 recess.

8 (Recess from 10:00 a.m. to 10:15 a.m.)

9 **THE COURT:** It's been six and-a-half years.
10 What's another five minutes, right?

11 All right. Very good. Is everybody finally ready to
12 go now?

13 **MR. LUKAS:** Yes, sir.

14 **THE COURT:** All right. Let's go, Carol.
15 Okay. Let's all rise for our jurors.

16 (Jury in at 10:16 a.m.)

17 **THE COURT:** Good morning. How is everybody?
18 Good. Good to see you. Excellent. Welcome back.

19 All right. All of our jurors are here and they are in
20 their spaces, and you may all be seated.

21 It's been so long I can remember all of your names
22 except this woman's in the front. Ms. Wells-Flanigan, how
23 are you? Welcome back. Good to see you. How was your
24 little vacation? You would rather do this work than your
25 regular work.

1 Carol tells me you are in a good mood though, so that's
2 good. We are closer to spring and moving along. Well,
3 listen, it's great to see you and welcome back and, you
4 know, we had a lot of work and a lot of time together up
5 until this point, but we still have got a lot of work to do
6 and that's what we are going to tell you about right now.

7 In all sincerity, we thought as a group, which is to
8 say myself and the lawyers, about maybe bringing you in for
9 a day or two last week, but then you know we were going to
10 be off Wednesday, Thursday and Friday and the thought was
11 with all of the evidence and testimony that you have heard,
12 to have you in and break up closing arguments and
13 instructions and deliberations would not be efficient and it
14 would be better to resolve legal issues last week, which we
15 did, and then give you the whole week off and have everybody
16 come back today.

17 So, as usual, I want to give great thanks and deference
18 to the lawyers, they worked really hard in your absence, and
19 of course my staff, and we have now put together everything
20 that we have needed to put together and we are going to
21 hopefully get the case to you today. In fact, I am very
22 confident we will get the case to you today.

23 We are going to have Mr. Lukas open up and give a
24 closing argument. He's got about two or two and-a-half
25 hours. So I think we will hear from him, take a very brief

1 lunch where you can refresh yourselves, get a little food, a
2 little drink, whatever. Afterwards, Mr. Morganroth will
3 have a similar amount of time, and then Mr. Lukas will have
4 a short rebuttal since they have the burden of proof. Just
5 like in the witness and opening statement phase, he goes
6 first, he'll go second, and then get a very short rebuttal
7 to conclude the case.

8 I will read instructions to you, which hopefully will
9 take about 30 minutes or so, and then you'll have the facts,
10 you will have the law, you will have the instructions, and
11 you will go deliberate. And you will do that all day today,
12 tomorrow, however long it takes you to get a verdict, and
13 that's where we are going from here, okay?

14 So I apologize for being about an hour and 15 minutes
15 late today. With the time off that we had, we had a couple
16 of final things to do, but as usual, you were all here right
17 on time.

18 And I know you have been paying great attention.
19 Please continue to pay great attention with the proviso that
20 anything here on in is not evidence. You have heard all of
21 the evidence in the case, and now you get to hear closing
22 arguments from the lawyers, which are their opportunities to
23 persuade you on how they think the evidence has come out,
24 all right?

25 Again, thank you for being a great jury, for all of

1 your attention and all of your service, and I expect by the
2 end of the day the case will be in your hands, okay?

3 All right. Thank you all very much.

4 Mr. Lukas, everybody has heard enough from me this
5 morning. You may take over.

6 **MR. LUKAS:** I was just going to say they probably
7 feel like they have heard enough from me, too.

8 Good morning, everybody.

9 **THE JURORS:** Good morning.

10 **MR. LUKAS:** I get to talk to you directly finally
11 after being able to do that and then just kind of going good
12 morning in the hallway and what not.

13 It's been a week, it's been ten days since we had
14 testimony, and I think you guys got it. I think you got it
15 in the first three or four days, but we had to put up our
16 representative plaintiffs and we did that.

17 No matter how many cases I try and we try, it's
18 amazing, the jurors putting their lives on hold and doing
19 this, and this was a long trial as trials go, and we
20 appreciate it and we feel like we have taken over a month to
21 prove what we think has been painfully obvious for a very
22 long time, forever. And I'll get to that, but we do
23 appreciate that you folks put your lives on hold and do
24 that.

25 This isn't a huge financial case individually for the

1 plaintiffs. Each one of them worked there for -- not for a
2 very long period of time and they didn't make a lot of
3 money, so they are seeking overtime for relatively short
4 periods of time based on very small amounts of income. But
5 as you can tell by their perseverance in almost seven years
6 of litigation and being here, that it is very important to
7 them, and we want to thank you for being here and
8 participating in it.

9 And I don't know if I am going to be two and-a-half
10 hours. I saw you all grimace. I'll do what I can. A lot
11 of the stuff that I'm going show you you have seen before so
12 that, you know, if I get an itchy trigger finger and start
13 slamming through them, it's because I think you have seen
14 them and you will have those back with you, the exhibits.
15 So I'm going to do the best I can to get you through this.
16 I feel like you have seen them, you get it, and that's what
17 we are going to do.

18 As I told you in the beginning when I first stood up
19 here, a little nervous, not really feeling like I know
20 you -- that's the other weird thing about jury trials is you
21 never get to talk to the jurors but you feel like you get to
22 know them. It's kind of a strange dynamic.

23 But I stood up here the first time and I told you this
24 case is about sales and whether or not the primary duty of
25 the loan consultants was sales, and if their primary duty

1 was sales, Quicken has to pay them overtime. And that's
2 what the judge will tell you the law is. People selling
3 financial products in an inside environment like this get
4 overtime if sales is their primary duty, and that's what we
5 believe we have proven.

6 Now, the judge is going to give you the law, and it's
7 this. This is where we start, at least. This is what
8 Quicken must prove to prove that these guy didn't deserve
9 overtime because, as you remember, the presumption is
10 everybody gets overtime and Quicken has to prove they don't.

11 So Quicken has to prove these two factors:

12 Plaintiffs' primary duty was the performance
13 of office or non-manual work directly related
14 to the management or general business
15 operations of Quicken Loans or its customers.

16 And that:

17 Plaintiffs' primary duty included the
18 exercise of discretion and independent
19 judgment with respect to matters of
20 significance.

21 And you go, oh, my God, what do those two things mean?
22 And he'll tell you what those two things mean, but after he
23 tells you what those two things mean, he goes around and he
24 explains all of those things, he's going to get to the
25 punchline, and this is what you are going to hear. This is

1 the punchline. When you hear the word "however," you will
2 know what we have been talking about since the first day I
3 stood up.

4 An employee whose primary duty is selling
5 financial products does not qualify for the
6 administrative exemption.

7 In other words, if their primary duty is sales, they get
8 overtime.

9 There are other ways plaintiffs can win, and we can go
10 back through the general instruction that he gives you and
11 march through all of these ins and outs, and I'll do that
12 briefly with you and we can win that way, but this is the
13 quickest way, this is the most obvious way, and this is the
14 way that plaintiffs prevail in this case.

15 So let's get right to sales, and let's get right to
16 what primary duty is because that's probably the first
17 question. What is primary duty? The judge is going to tell
18 you it means:

19 The principal, main, major, most important
20 duty that the employee performs.

21 It's just exactly what you think it was, primary duty. It
22 does not mean most time-consuming duty, the judge will tell
23 you.

24 [It] means the "principal" or "chief" --
25 meaning the most important -- duty performed

1 by the employee.

2 Again, it's just what you think it is, primary duty.

3 The law does not require you to shut off your brain,
4 fortunately. It does not require you to enter some bizarre
5 universe where sales is only asking for the business. The
6 law actually allows you to use your reason and common sense.
7 In fact, the judge will use words just like that. He'll
8 tell you to use your reason and common sense.

9 So let's get right to it. Why do we know that the
10 primary duty of loan consultants was sales? Why do we know
11 that?

12 Well, when Quicken didn't know it mattered, when they
13 didn't know whether or not they had to pay overtime hinged
14 on whether it was sales, when they didn't know it mattered,
15 that's what they called it. When they didn't know it
16 mattered, they were very accurate in how they described it.

17 Mr. Gilbert went on and on about the loan consultants.
18 The best sales force in the country, that's what he wanted.

19 You, we want to call you the best sales force
20 in the country.

21 That's the loan consultants. That's Mr. Gilbert describing
22 these people quite accurately.

23 Here is Mr. Emerson, as we go down the chain.

24 Mr. Gilbert, chairman; Mr. Emerson, CEO.

25 You know, I'm moving closer to you guys. I'm

1 moving closer to the sales floor.

2 He wants to make sure his salespeople are selling 90 percent
3 of the time. You heard Mr. Emerson testify. He was talking
4 about our people, the plaintiffs, the loan consultants
5 selling 90 percent of the time.

6 Here is Jay Farner, as we move down the chain.
7 Gilbert, Emerson, who I apparently had a hard time keeping
8 straight, Mr. Farner. Here is Mr. Farner:

9 Sell, sell, sell.

10 I don't even know what font that is, but it sure gets to the
11 point, doesn't it?

12 Here is Mr. Farner:

13 It's all about selling.

14 Here is Mr. Farner again:

15 We sell. Let's get excited about it.

16 Here is Mr. Apple, who is one of Mr. Birkmeier's
17 disciples. He worked under Mr. Birkmeier all the way up
18 through the chain. He's now in Arizona running the Arizona
19 shop.

20 Let's look at this one. I don't think we looked at
21 this one that carefully so I'll spend a little bit of time
22 with it. He's trying to, he's trying to fire up his troops.
23 He learned from Mr. Birkmeier how to fire people up. He
24 knows what the job is.

25 I have been in the business for nine years,

1 and all I can think about is business. Sales
2 is a career for me. It's 9:45 p.m., and I am
3 sitting on the couch trying to figure out
4 ways to help all of you become more
5 successful. Answer these questions: Are you
6 exited to be a salesperson?

7 That's the loan consultant. Of course they are
8 salespeople.

9 Are you willing to call your past clients and
10 ask them for referrals?

11 He goes on and on.

12 Are you willing to call every LOLA lead
13 five times?

14 Will you work up and write a deal before
15 lunch?

16 Are you logged in from home to go through
17 your emails at night instead of during prime
18 time selling hours?

19 Do you check your voice mail before you go
20 to bed?

21 And he goes on and on.

22 And it's sales. It's a sales job. Look at him
23 describe it.

24 Are you angry when the bridge send out emails
25 and your name is at the bottom of the list in

1 brown instead of green?

2 Do you hate to see your name at the bottom
3 of the board?

4 Is it hard -- you are fighting to move to
5 the top.

6 Does it make you mad when Dakota gets an
7 \$18,000 commission check and yours is 3,000?

8 That's a sales job. That's all it is. It is a sales
9 job.

10 Mr. Apple is describing -- here is David Lee. He came
11 into the business. I believe he was -- worked with
12 Mr. Perry. They were kind of -- they were peers at the
13 time. You saw some banter between them on emails.

14 Here is what he's telling his -- this is when he is a
15 regional. This is what he's telling his sales directors.

16 Now, when you guys were loan consultants, you
17 were the greatest salespeople in the company.

18 Now that you are their managers, you've got
19 to make them the greatest salespeople in the
20 company.

21 They know how to describe the job. Here is
22 Bill Pellow:

23 Key stuff from Jay Farner. The best
24 salespeople make sales calls in the morning.

25 We know that from Mr. Farner's voice mail, that that was his

1 advice to these salespeople. They know how to describe the
2 job.

3 Here is Mr. Farner:

4 We are not order takers. We are sales
5 professionals. Let's sell hard today.

6 It's because it's a sales job. They knew how to
7 describe it.

8 But then they did find out, they did find out that it
9 mattered and that sales, if it's sales, they have to pay
10 overtime, and what happened then? What happened when they
11 found out sales matters?

12 I am not sure that coloring didn't turn out so great
13 because it's kind of hard to read, and this is what they
14 call a summary exhibit because it's got a bunch of exhibits.

15 I stood up the first time and told you that they
16 changed the language in the documents, and then it got
17 mucked up and we were worried that you were confused about
18 dates as to when the language changed on what. So we put it
19 on a time line, it got "Rachhana-rized", and we've got job
20 offer letter. In May of '02 it didn't say anything about
21 duties or expectations. September 5, 2003, the job offer
22 letter still doesn't say anything duties or hour
23 expectations. Ten days later on September 15th suddenly
24 that's when we have the language:

25 Joining one of the most highly trained and

1 skilled sales forces in the United States
2 of America. Rugged character and strong
3 competitive spirit is vital to be a great,
4 winning salesperson. As a sales
5 professional, you will need to make a minimum
6 of 80 outbounds a day, 55-plus hours per
7 week.

8 That's where we get that, and the reason we know this
9 is when it happened is because Katie Ennes, one of our
10 plaintiffs who testified, got both letters. She got one on
11 the 5th and on the 15th. So we know exactly when they
12 changed. They decided they wanted to be more specific in
13 September of '03 about what this job was really about, and
14 that's when they said sales, sales, sales.

15 Then the lawsuit happens in May of 2004, and in that
16 September/October '04 time frame, that's when the word sales
17 gets wiped out. That's sort of the story of the job offer
18 letter.

19 Employment agreement, down there below in green. It
20 does generally describe the duties, but it doesn't say
21 anything about collecting or analyzing or advising or
22 anything like that. Instead, it talks about
23 production/sales in the employment agreement.

24 And then come around September '03 you look at the comp
25 plan. Nothing in the comp plan in '03 about job duties or

1 primary responsibilities or anything like that. Then the
2 lawsuit is filed May 2004. Then the comp plan -- the word
3 sales disappears from the comp plan completely, almost
4 completely. Instead, it's revised to include primary job
5 responsibilities that basically conceal the true sales
6 nature of the job.

7 And then in May 2004 we get this overarching mortgage
8 banker's duties and responsibilities statement that they
9 marched through with every single plaintiff who was there
10 before the -- who started after the lawsuit got one those,
11 from May 2005 on, got one of those stuck in front of them on
12 their first day of employment.

13 And you will have to take a look at that, and when the
14 judge reads you the law, you take a look at that thing.
15 They are trying to match up the law and say, ta-da, see, we
16 were complying all along.

17 But that's the time line. It was sales and it was
18 perfectly fine sales until they found out it mattered, until
19 they found out that, well, it better not be sales or we have
20 to pay overtime, and then suddenly we get some very creative
21 language by some very good lawyers at a company that's full
22 of very smart people.

23 How else do we know it was sales, why we know their
24 primary duty was sales? Because that's how they paid them.
25 Very simply, they paid them as salespeople. Again, is there

1 something wrong were being a salesperson? No. Commission
2 sales jobs. Everyone knows what a commission sales job is.

3 You pay to motivate the primary duty. That's what you
4 do when you are an employer. You want to motivate the
5 people that do the thing that you want them to do. And how
6 do they motivate these people? They motivate these people
7 by paying them a commission on how many loans they sell.

8 I want to play Mark Mazey's voice mail, and listen to
9 Mark Mazey. This is a sales director. I believe at the
10 time he's still in Livonia. He's the one that moved to Troy
11 and then he went to Cleveland, and he testified. He
12 testified by video. Him and Mr. Perry are in Cleveland
13 together.

14 I'm going to play Mr. Mazey's voice mail, and I want to
15 you listen to how he describes it. He calls it a commission
16 sales environment, and you should treat it as such.

17 (Voice mail played.)

18 **MR. LUKAS:** I played it for the commission sales
19 environment, but there's some other stuff in there, and what
20 I like about this voice mail is this is just -- and you
21 heard Mr. Mazey testify he left these every day. I like
22 this one because you can tell this is the kind of thing he
23 tells them every today.

24 This isn't a Jay Farner blast over all loan consultants
25 saying, you know, -- well, we'll play one of Mr. Farner's

1 later. This is Mark Mazey, sales director of a team of
2 20-some, 20 to 24 loan consultants. I think he said
3 sometimes it went from 12 to 20 to 24. This is a guy
4 running those people every day.

5 It's a commission sales environment. You can hear it
6 in his voice. He pounds on these people every day: Do you
7 got deals, do you got deals, do you got deals, do you got
8 books? This is everyday life, and that's the job and that's
9 what it was.

10 And they paid it that way. They paid it as a
11 commission sales environment, and it was directly tied to
12 the individual sales production. It wasn't some vague team
13 goal or an extra little bonus at the end of the month or,
14 you know, some profit thing, you know, based on performance
15 of the whole place. This was individualized commission
16 sales.

17 They paid a \$24,000-a-year salary, just enough so you
18 don't starve. You can eat, you can put gas in your car, and
19 go to Quicken to work. After that, boy, you better sell,
20 you better be able to sell or you are not going to last very
21 long.

22 And they do that on purpose. \$24,000 a year at
23 60 hours a week, that's about eight bucks an hour; at
24 65 hours a week, it's \$7.38 an hour; and at 70 hours a week,
25 it's about 6.53 an hour.

1 So where is the incentive? The incentive is to sell,
2 where you would want to put the incentive if you have a
3 sales force. The rest is commission. If you make Quicken
4 money, you get a little more. You have to make Quicken
5 enough money because, as we know, you have to have a certain
6 units per month. If you only sell five loans a month,
7 Quicken makes the profit for those loans, but you are still
8 stuck with your one-month share of 24 grand, 2,000 bucks.
9 You've got to -- it's not just sell, sell a loan and you
10 make more money. It's sell enough loans and you make more
11 money.

12 That's why they keep saying, well, there is other
13 factors besides commission. There is customer service
14 surveys. There is a small bump you can get if you have good
15 customer service surveys, but that only kicks in if you sold
16 enough to qualify for a commission in the first place. In
17 other words, you could sell five or six loans and not meet
18 the units, and you could have perfect customer service
19 scores. So what? You don't get any extra anything because
20 you didn't meet the units because it's a commission sales
21 job.

22 The same with green bar. You can jack up the price on
23 all five of those people and make extra money for Quicken,
24 but if you don't sell that sixth loan or seventh loan and
25 get you to the unit piece you need to get to, Quicken takes

1 it all and keeps it all and you don't get paid anything.
2 It's two grand a month.

3 And commission is critical to their system. You heard
4 Mr. Gilbert testify very emphatically that commission is
5 critical. Why is it so critical to their system? For a
6 couple of reasons.

7 Number one, you want to incentivize the people to do
8 what you want them to do: Sell.

9 Number two, it's a perfect system for Quicken. They
10 can bring people in, just bring them in and bring them in
11 and bring them in. If they make it, great, that means
12 Quicken is making a bunch of money on them. They have to
13 pay them a commission, but it's only a piece of the profit,
14 right? And if they don't make it, so what, all they have to
15 do is sell enough loans to cover the two grand a month,
16 which can't be too hard, and then they wash out and they are
17 gone. Bring in more, bring in more.

18 The goal of 1,000. The more people selling, the more
19 loans sold, the more money made. Evil? No. Is it a
20 nonprofit company? No.

21 Good for them, they have made a great living, they have
22 done a fantastic job of making money, but they made it with
23 a sales force. They didn't make it with advisers,
24 consultants and analysts. That's the point.

25 You know, the customer doesn't pay a consulting,

1 advising or analyst fee. The employee doesn't get paid to
2 analyze -- if the employee meets with a person on the phone
3 and talks with them for a half hour and only gives them
4 advice and hangs up, there's no pay, no commission pay.

5 And if they don't -- and, frankly, if they did, they
6 would get yelled at. Find out -- and we'll hear in the
7 voice mail that we play from Mr. Farner. Find out if they
8 qualify. If they don't, get off the phone. That's the
9 instruction to these people. That's the advise, consult and
10 analyze. Find out if they qualify under Quicken's
11 guidelines, get that loan, get what you need to figure out
12 loan to value, get what you need to figure out debt to
13 income, get the Social Security number for the credit score,
14 find out if they qualify. If they don't, good bye. Okay?
15 So that's how we know.

16 And how do -- and they motivate these people with that
17 carrot of commission, as all salespeople are motivated by
18 commission. Here are some examples.

19 This is Dan Gilbert. You remember this one. Frankly,
20 a pretty harsh one.

21 If I'm 23, 28, 33 or even 40 and I had one
22 chance, one opportunity to insure the
23 financial future of my family and myself,
24 what lengths would I go to? If I had one
25 chance, one opportunity to rise out of

1 mediocrity and become great at something,
2 would I do it? If I had one chance,
3 one opportunity to work countless hours
4 and/or figure out a way to become the most
5 efficient production machine ever seen to
6 mankind, would I do it?

7 A production machine, that's what these people are.

8 If I had one chance, one opportunity to make
9 more money than my mom or dad ever did and be
10 in a position to help them through their
11 twilight years, would I do it? If I had one
12 chance, one opportunity to make enough money
13 to insure my kids' college education, would I
14 do it?

15 1 to 2 apps in this market is weak. 2 to
16 3 is mediocre. 4 to 10 is great.

17 Sell loans, make money, and that's how you incentivize
18 and that's how you motivate a salesperson.

19 Tim Birkmeier, same thing:

20 Do you think about improving as a salesman
21 when outside of work? Do you think about
22 better ways to sell? Mindset, skill, effort,
23 and \$\$\$\$.

24 And he told you that that \$\$\$ means \$\$\$ for the loan
25 consultant, not for the customer. \$\$\$, because that's what

1 they were trying to incentivize them to do.

2 This one has even more dollar signs. This one is from
3 Matt Stauffer, a disciple of David Lee.

4 You guys can read this as just another email
5 or you can take to heart what David is saying
6 here. There is nothing more important than
7 energetic, enthusiastic sales. That is how
8 you get somebody emotionally involved in what
9 they are saying.

10 This emotion keeps coming up, too. Why do you want a
11 person full of emotion when they are trying to figure out
12 their mortgage?

13 Is that what a financial adviser, consultant and
14 analyst does? On the contrary. I know financial advisers,
15 consultants and analysts. They are not emotional people.

16 Why do you want to get them emotional? You want to get
17 them all fired up, and you want them just to go, okay, okay,
18 okay, okay, yes, yes, yes, the five yeses.

19 Selling with energy, enthusiasm and emotion
20 will lead to more \$\$\$\$\$\$ for each and every
21 one you.

22 You, being the loan consultant.

23 If you have any questions on how to embrace
24 the concept of selling with energy, come see
25 me. I have made a great career in sales here

1 by focusing on this each and every day.

2 He didn't have a great career as a financial
3 consultant, analyst or adviser. He had a great career in
4 sales, and he still has a great career in sales, as do the
5 managers that we have been showing you that properly
6 incentivize people.

7 How else do we know their primary duty is sales? They
8 are praised, disciplined, promoted and fired based on their
9 sales production. Sales production, production, production,
10 sales, sales, production. That's how it goes.

11 Chuck Nance. Now, I know I have shown this to you
12 before, but I am showing it to you again because it's to me
13 in one email how you succeed as a loan consultant in the
14 2002 to 2006 time period in one email. It sort of sums it
15 up.

16 Here is Chuck Nance being congratulated for getting
17 promoted. He was a mortgage banker. He's going to be a
18 senior mortgage banker. Why? Number one, he's a salesman.
19 I think later in that piece right there he's called a
20 salesman's salesman.

21 Number two -- so, number one, he's a salesman. That's
22 how he got promoted. Number two -- oh, I like that one.

23 The difference between Chuck and most other
24 salespeople is his enthusiasm and ability to
25 build rapport with any type of person, and he

1 loves to create. Chuck's strength is in
2 creating great responses to objections and
3 pivoting back to the sale. That is a natural
4 ability. That is a salesman's salesman. If
5 you want to hear him selling -- if you enjoy
6 selling, you can come hear him create some
7 sales music.

8 I mean, there is no doubt these people are salespeople.

9 The number two reason why:

10 Chuck not only cares about his own numbers
11 that he's selling but those his teammates are
12 selling, too.

13 Number three, long hours:

14 He's in early and out late most days.

15 There, in one email, one announcement of a promotion
16 you have got the three things you need to succeed. Number
17 one, you sell; number two, you care about your team's
18 numbers, too, not just yours; and number three, you work
19 long hours.

20 Then you've got this guy, Jeff Perry, and, you know, we
21 didn't pick on Jeff Perry. I think we have been accused,
22 oh, you have picked on Jeff Perry or you keep choosing
23 Jeff Perry.

24 Quicken kept choosing Jeff Perry. Jeff Perry was
25 promoted four times from 2002 to 2004. The Firm, the team

1 that he was the sales director for, was number one in sales
2 production from 2001 to 2002. The Empire Division, when he
3 became a regional vice president, was number one in
4 production in 2003 and 2004.

5 Then he was given Troy. They opened Troy, and they
6 sent Jeff Perry because this guy knows how to get loan
7 consultants to do their job the right way, okay? They sent
8 him to Troy. They opened Troy with the guy.

9 He got Troy up and running, and then they sent him to
10 open Cleveland. That's what a star this guy is. Why?
11 Because he's an unbelievable salesman, and he knows how to
12 manage salespeople. Not because he's just this really
13 genius financial adviser and consultant. That's not why
14 this guy got promoted four times.

15 And we didn't pick him. You will see from our
16 emails -- we have very few emails past '04. We were given a
17 piece like this. We were told, oh, we had hundreds and
18 millions, whatever. We were lucky to get Jeff Perry emails
19 because, boy, does it tell a story.

20 Here is his promotion. Why is he promoted?

21 Because he's one of the premiere salespeople
22 and sales managers. His team, The Firm,
23 consistently helped set the bar for
24 applications, closings and revenues.

25 That's why. And he's creating more leaders just like him,

1 Jeff Perry is.

2 How did he become so successful? He became so
3 successful by clearly communicating what the loan
4 consultant's primary job duty was. Sell, sell, sell. This
5 is a Jeff Perry special right here.

6 Here is another one from Jeff Perry to his team.

7 Our job is to sell.

8 As a salesperson, our job is to SELL.

9 Today we have to sell hard.

10 Tell this poor guy, remind him that his
11 job in life is to sell tomorrow.

12 He knows how to communicate. This guy better
13 exemplifies how you advance at Quicken, by being a great
14 salesperson and a person that can motivate people to sell,
15 and that's how he did it.

16 Number two reason, by motivating his loan consultants.

17 Anyone else out there selling their ass off?

18 Make the clients love you. Someone sell.

19 Sell with passion, enthusiasm. The products
20 are there.

21 We are in panic mode. Stay calm. Don't
22 leave your chair or phone unless you have to
23 go to the bathroom. Dial and sell and we
24 will finish strong. It's still early. It's
25 only 4:30 in the afternoon. Every day you

1 must write a loan. Make it your mission in
2 life right now.

3 He knows how to motivate these folks.

4 Hate to be a prison warden for the night, but
5 we can't leave here with the production we
6 have today. Too many leads, rates too low.

7 How else did he do it? How else did he become
8 successful? By teaching sales techniques. Let's see some
9 Jeff Perry sales technique specials.

10 Sell these fools. Scare them.

11 I told a guy yesterday that the rates went
12 up "because of battles in the West Bank."

13 Oh, isn't that clever, Jeff?

14 That's sales. He's not advising and consulting. He
15 doesn't know what's going to happen to the rates because of
16 battles in the West Bank.

17 And you heard Mr. Banfield. Poor Mr. Banfield. They
18 wanted to try to make it so complicated so they take a
19 person who is not a loan consultant to march through the
20 matrix. He's a secondary market guy that basically writes
21 the matrix.

22 He was actually excited by this one. He didn't like
23 the words -- sell these fools, scare them -- but he was
24 actually kind of excited because someone actually took
25 something he said out and used it. Now, they used it to

1 sell, but so what? Of course they used it to sell because
2 that's what they do.

3 Here is another Jeff Perry.

4 I don't buy it. Rates could move higher

5 Monday. Let's sell the uncertainty. Put the

6 improvement in your pocket.

7 That's a loan consultant's pocket, by the way, in case you
8 don't understand that one.

9 This is Exhibit P118, and if you look at P118, below it
10 is a Mr. Banfield email saying that he thinks rates are
11 going to drop. Well, you can't scare somebody with dropping
12 rates so Perry is telling his people I don't buy it, rates
13 could go higher, so keep scaring these fools. That's how
14 Mr. Perry succeeds.

15 And he teaches his people. Here is Eric. Eric works
16 for Mr. Perry. About a week or two later here is what Eric
17 says.

18 It's time to sell a little bit of fear.

19 Rates are too wild for them to care about

20 quotes. Sell that fear. It works.

21 That's exactly what Jeff Perry taught him, it works,
22 and it does work. It's good sales.

23 How else did he do it? He did it by developing leaders
24 through his example. Here is Mr. Perry developing a couple
25 of leaders, Mr. McLean and Mr. Pellow.

1 Production is an F'ing joke today. Nobody
2 seems to care. I am going crazy between 5
3 and 7.

4 It seems like Mr. Pellow took the lesson. A couple of
5 weeks later:

6 Where the F is our pride? This other team is
7 beating us up.

8 That's how we know. That's how we know how you
9 succeed. Mr. Perry, that's the guy. That guy is a rocket
10 ship during this four years at Quicken. Every year he is
11 getting a better job, every year he's getting a raise
12 because he's doing those things. And that's how he did it
13 and that's how he got there, and that's sales.

14 In fact, Mr. Perry -- you don't have to be a Mr. Perry.
15 You can be a Colleen Booza. You don't have to be a
16 Mr. Perry, you can be a Colleen Booza, but it doesn't make
17 your job any less sales. It just makes you a nicer person
18 and a less sharp salesperson. That's all. It's the same
19 job.

20 Mr. Perry, and the reason we highlight those emails, is
21 because that's so obviously sales. We don't have to prove
22 dirty, nasty, rotten sales. In fact, we don't have to show
23 that that's the norm. We just have to show sales.

24 But, boy, what else do you do with sell these fools,
25 scare them, except it's sales. That's why we showed you

1 these things. Not because we are trying to prove it's some
2 kind of vicious, nasty sales all the time. You heard
3 Colleen Booza. I doubt very much she's saying scare these
4 fools, but she's still selling.

5 And then there's a couple of big fat exhibits that you
6 will see. They will be in your pile of stuff. It's P100
7 and P101, and what these are, P100 is termination letters or
8 termination documents, and you'll see, flip through them,
9 sales production, lack of sales production, good bye.
10 Disciplinary documents.

11 You have seen some of these up on the big screen. Lack
12 of sales production. You sell this much, this much and this
13 much or you are gone, and they are.

14 But flip through these and take a look. Look for you
15 are a really bad adviser and consultant and analyst. So
16 that's how we know. You are praised, disciplined, promoted
17 and fired for it.

18 How else do we know that their primary duty was sales?
19 Because that's who they hired. They hired people with sales
20 experience. They hired car salesmen, pharmaceutical
21 salespeople, people who were selling Yellow Page
22 advertising. Mr. Pikora, who was selling high-end exercise
23 equipment, computer sales. Those are the people they were
24 hiring for the job.

25 No mortgage experience, no financial background? No

1 worries. You heard the testimony over and over again, don't
2 worry about it. You will learn what you need to learn
3 enough to sell stuff, which is what you do with a
4 salesperson.

5 We have telephone debt collectors, hospital orderlies,
6 restaurant workers, college grads right out of college,
7 high school grads, people with community college, people
8 with even less community college than their resume says, and
9 they are getting this job. And that's fine because it's a
10 sales job, and they can teach you. We will teach you what
11 you need to know to sell this product, and that's what they
12 tell them over and over again. If you can sell, you will be
13 fine.

14 Sell me this pen. Jay Farner's line, Tony Nuckolls'
15 line. Ms. Farner admitted he said that in the interviews
16 all the time. He was very candid. He admitted, yeah, I say
17 sell me this pen.

18 Why do you tell a candidate to sell me this pen?
19 Because that's what matters. If you can sell a pen to me
20 and I see that you can respond to objections and you can
21 pivot and you can move and dance, then you are good.

22 And that's what he's doing. That's why he's saying
23 sell me this pen.

24 Look at the hiring packet. The perfect candidate for
25 hire, prepared on July 2, 2000 for Jennifer Meyers at

1 Quicken Loans. They put together this profile. They tried
2 to distance themselves from it. They are like that's a
3 third-party vender, we hardly used it, I never looked at it.

4 Look how they described the web sales consultant. This
5 is who they are looking for to hire.

6 This position sells products or services
7 directly to customers. This position's role
8 is to reach as many potential customers as
9 possible and in an effective way communicate
10 the value of what he/she is selling. One
11 must be able to make a positive impression in
12 the first few minutes of interaction with the
13 prospect. Often the person in this position
14 will encounter a significant amount of
15 rejection and must stay positive and upbeat
16 throughout the day.

17 That's a pretty accurate description of a loan
18 consultant, and that's who they are looking to hire. Why?
19 Because the position does sell directly to the customer, and
20 they can't divorce themselves from it.

21 How else do we know that their primary duty is sales?
22 How they train them. I think Mr. Gilbert in an email told
23 us the perfect formula, Quicken's perfect formula for
24 training these people. Mr. -- I think down below -- this is
25 Exhibit P68. You will see down below Mr. Banfield laying

1 out, hey, new products, new types of loans you can sell.

2 And Mr. Gilbert's response is, duh:

3 Number one, they all take the course. In the
4 course they learn about the products. They
5 learn how to SELL them. They pass the test
6 and write lots of business.

7 It's kind of like, duh, that's the formula, and that's
8 the formula they followed for everybody. That's the way you
9 teach a salesperson how to sell. A salesperson can't sell
10 something they don't understand. They can't sell something
11 they don't know. You have to convince a person to buy
12 something. You can't convince them to buy something if you
13 don't know what it is you are selling. And that's how they
14 train them.

15 What do they train them on? That helps us, too.
16 ARcing, acknowledge, respond and close, we have been all
17 over that.

18 ARping, the same as ARcing, except acknowledge, respond
19 and pivot. The only difference between pivoting and closing
20 in the ARC and the ARP is where you are in the sales
21 process. If you are in Step 7 and you are trying to close,
22 it's an ARC. If you are somewhere else and you need to get
23 back to the sales process because someone is taking you
24 somewhere with a question, God forbid, that's an ARP.

25 We went through these. This is the ARC, Visa or

1 MasterCard. They have training documents, and you will see
2 them in your jury room, full of responses.

3 Matthew Thompson. I'm not going to play this call clip
4 for you, but Mr. Thompson, he's another outstanding
5 salesperson, and you heard his call clip that we played for
6 you. And it will be -- and you will have those clips and
7 all of that stuff back with you, the voice mails.

8 He ARCs, he does an awesome job of ARCing on a deposit
9 objection, I think you might remember, and the guy is like,
10 oh, I don't have my credit card, it's at home. You know, he
11 really does a good job, and the guy was shocked. And so
12 when you go back and hear Mr. Thompson's call, listen for
13 his ARPing on deposits and shopping. That was great.

14 He also did those soft closes that we heard about,
15 which is you don't ask Visa or MasterCard, but you try to
16 regain control by asking stuff like, well, you know, be
17 assumptive and say when we do this do you want fax or email
18 or would you want the appraisal on the week or the weekend
19 and do you want to lock or float? You know, those are all
20 of the things that help you pivot and those are soft closes,
21 but Mr. Thompson does a great job of that and you heard
22 that.

23 The other one we hear all the time, ABC, from
24 Dan Gilbert, from Jay Farner. Always be closing, always be
25 closing. That's what salespeople do; they are always

1 closing.

2 Here is another one, foreshadowing the sales process.
3 That's up to four times they are foreshadowing. It's a
4 fantastic sales technique, and they teach it very well and
5 these people do it well.

6 And when you listen to Ms. Booza's call clip -- it's a
7 little long, and I'm not going to play that one for you
8 here. That's called, "A Great Overall Second Call." She
9 does a great job of foreshadowing.

10 Actually, she does a great job of all of these things.
11 If you take Ms. Booza's call clip and you follow the sales
12 process, if you start at the second call, the green side,
13 the money side, and you follow Ms. Booza's call, that great
14 overall call, you can just track it. She puts in her
15 personality and it's not exactly that because the guy made
16 an objection too soon and she had to ARP, but it just
17 follows perfectly. She's fantastic at it. She's a
18 wonderful salesperson, and she foreshadows like crazy.

19 Here is one, pushing the bruise. I still can't be
20 convinced pushing the bruise is a good thing. I have heard
21 of holistic medicine and new kinds of ways, but I have never
22 heard about healing someone through pushing a bruise.
23 That's not a very good way to heal someone.

24 Here they are talking about bushing the bruise.

25 What's a client's pain? Find out the pain of

1 the client. You are then able to use those
2 pains in order to present programs and use
3 during rebuttals or objections. You can
4 overcome rebuttals and objections if you just
5 know their pain, and you can poke at it.
6 Once the client objects, knowing their pains
7 can be used to your advantage.

8 That's pushing the bruise. That's why they are digging
9 deep in two minutes. They are digging deep so that they
10 know why you want this stuff emotionally so that they can
11 get you to buy it. That's sales.

12 Here is Mr. Perry. He had a call clip called pushing
13 the bruise. We couldn't find that one. I bet that was
14 great. It's a closing technique for Mr. Perry.

15 The emotional hook, we talked about that, and that's
16 right on the sales process. I just talked to you about
17 that.

18 Find out why they want in. The top one there, goals,
19 listening and rapport, that's on the first call. And then
20 the second call is that bottom box, and in emotionally,
21 refer to vision and goals from the first call because that's
22 sales.

23 The three-minute rule. This one would kill an adviser,
24 a financial adviser or consultant. Man, you've got
25 three minutes. Go, advise, consult, analyze, pivot, close,

1 start over. That's what this one is. Start your closer
2 clock, foreshadow the deposit, review their goals, pitch the
3 program, review the benefits, pivot to the sacrifice close.
4 If they ask another question, restart your clock. You've
5 got three more minutes to get that Visa or MasterCard.
6 That's the three-minute rule.

7 Control the release of information. Have you ever
8 heard of somebody advising someone by controlling the
9 release of information or not giving them information?

10 Oh, I want to show you something, by the way, about
11 digging deep. I missed that part of this email. In the
12 middle of this one, this is a trainer telling a loan
13 consultant:

14 By digging deep, I mean you should ask the
15 client very briefly what they will be able to
16 accomplish once they lower their rates and
17 their payments. Are they trying to set up
18 retirement? Is he planning vacation? That's
19 finding their pain, finding what they really
20 want.

21 Digging deep. Digging deep very briefly? That sounds
22 like something Quicken would say. Selling only means asking
23 for the business? Digging deep very briefly.

24 Okay. Controlled release we talked about.

25 The benefit sandwich we talked about, presenting the

1 benefit sandwich. The benefit sandwich is, oh, people don't
2 like to pay fees and rates kind of scare them, so you tell
3 them a bunch of great stuff about the loan and then you tell
4 them fees and rates and then you get that emotional piece
5 back in there and tell them other great benefits and feed
6 them the sandwich. That's sales. That's all it is. It's a
7 heck of a good technique, and Ms. Booza on her call clip,
8 boy, that benefit sandwich was perfect.

9 Training, green bar. Here is Mark Mazey, the guy that
10 went from -- he came to Laurel Park actually. He went
11 Livonia, Laurel Park to Cleveland. He got promoted,
12 promoted, promoted. Here is what he says about green bar.
13 He says to one of his loan consultants, you know, are you
14 working today, what's going on? The guy responds:

15 I came in at 8 a.m. and stayed until
16 7:00 p.m., 11 hours of production. Two deals
17 with 6K green bar and two books back. I'm
18 here today at 7:30 a.m., logged in and ready
19 to go.

20 Mr. Mazey says, all right, now that's good. That's the
21 kind of intensity he wants on XXX.

22 And he's got that green bar going. That's good. Green
23 bar, oh, yeah, that's what Mr. Mazey says about green bar.
24 Green bar is sweet. Green bar is extra money. Green bar is
25 commission. Green bar is what salespeople do. Green bar is

1 nothing but up-selling, that's all it is, or selling
2 something --

3 Do you think a car salesman will sell you a car for
4 cheaper just because they can? No, commission salespeople
5 want the price as high as they can, and that's what Quicken
6 has set up. Commission salespeople want the price as high
7 as they can get away with. They still have to sell it so
8 they can't be so outrageous that they lose the deal, but
9 they can tweak it up a little bit. They can sell a rate
10 that's a little higher than Quicken's guidelines say they
11 can. They can raise that bar because they are salespeople,
12 and that's what salespeople do.

13 Again, evil? No. In fact, there is caps on how much
14 they can do that. The loan consultant can't -- I think it's
15 like 2 percent. It's right in the comp plan. There's laws
16 in connection with loans on how far you can raise the green
17 bar. So there is caps. It's not necessarily evil, but they
18 do it.

19 That guy was selling 6K green bar. You heard
20 Ms. Farner say, gee, the biggest one I can think of was a
21 couple thousand dollars. We heard testimony of \$10,000
22 green bar, 6,000, 7,000. Mr. Farner sure has heard of
23 bigger green bars than that, but it doesn't sound good.
24 That sounds like sales so I'm not going to say that I have
25 heard of big green bars.

1 How about huge green bars? Mr. Mazey says:

2 This is huge. Halt, green bar monsters.

3 Now, here is another -- sense of urgency is another
4 thing they train these people. And I want to play you
5 two call clips, and these call clips again, remember, are
6 from defendants' library of best practices for loan
7 consultants, okay? And both of these call clips are
8 entitled sense of urgency, and I'm going to -- it's
9 two different styles I want you to hear.

10 Let's hear Colleen -- or actually let's listen to
11 Ms. Khoury's first.

12 (Call clip played.)

13 **MR. LUKAS:** She seemed to understand how to raise
14 a sense of urgency.

15 Let's hear Ms. Booza's style.

16 (Call clip played.)

17 **MR. LUKAS:** Both of those people, both of those
18 loan consultants are using the same technique, and that's
19 creating a sense of urgency. Ms. Khoury is doing it by
20 saying, man, your thing is going to expire and you are going
21 to be at 8, 9 percent, you are going to be in big trouble,
22 you better buy from me today, right now.

23 And Ms. Booza is saying, oh, you know, the credit card
24 companies, some credit card companies -- she doesn't know if
25 this one is or what's going to happen -- are going to be

1 raising their minimum payments and you are going to be stuck
2 with an extra 100, 200 bucks so it's a good thing you are
3 doing this.

4 Two different styles, but it's the same technique, and
5 they are both sales. I would rather talk to Ms. Booza,
6 frankly, but that doesn't mean she's any less sales than
7 Ms. Khoury. It's the same thing, and it's how they are
8 training these people.

9 How else are they training these people? Language.
10 Boy, words are big, words are big at Quicken.

11 Banker's thesaurus. This, of course, comes out after
12 the lawsuit.

13 Bag the deal, sell a mortgage, sell a loan,
14 get a loan.

15 Ah, don't use those phrases. Say:

16 Acquire the client, bring the client on
17 board, gain a commitment.

18 Reason?

19 These phrases speak to a higher level and
20 long-term relationship. If necessary, we can
21 use these replacement phrases when speaking
22 to anyone, not just one another.

23 It's the same relationship, it's a sales relationship,
24 but, boy, you don't want to say sell.

25 Pitch the program, pitch the deal.

1 No, say:

2 Present the program, present the options.

3 "Pitch" is commonly used in sales. It
4 does not assume the sale, and it does not
5 sound professional to clients. Let's take it
6 to a new level.

7 They are not saying it's not sales. They are saying --
8 and that's what really I find interesting. When you look at
9 this banker's thesaurus, they didn't do the banker's
10 thesaurus just for this lawsuit. They don't want the
11 clients to know it's sales either.

12 I mean, a client at Quicken Loans, would they want to
13 know all of these techniques are being done on them? Would
14 a client want to know that they are being pivoted, that they
15 are being controlled, that they are getting emotionally
16 hooked, that they are getting their bruise pushed? No.

17 Be more careful or they are going to figure
18 out we are sales.

19 Just like they are doing with you.

20 Here is another one.

21 Enthusiastic words. Conveying enthusiasm and
22 energy on the phone is critical to successful
23 selling.

24 Darn right it's critical to successful selling. Is it
25 critical to advising, consulting and analyzing? No, but

1 it's critical to successful selling.

2 Power words. Here is another one, and when you get to
3 this one, the print is pretty small, but they are saying,
4 you know, write down as many of the client's own words as
5 you can and parrot them back, it makes them all comfortable.

6 These are sales techniques.

7 Use humor.

8 Relate to the client. If he's a car guy, say
9 things like we have got to run a diagnostic
10 check and look under the hood.

11 These are sales techniques, that's all they are, and
12 it's all part of their training, sales training. In fact,
13 it's even called sales training.

14 How do they train them? They show them movies,
15 Glengarry Glen Ross. You heard all about those early on.
16 We quit talking about it because we were bored with it. The
17 Boiler Room, the same thing. If you have seen Boiler Room,
18 I think we described the scenes that they play. They play
19 the hardcore selling scenes for these people, the nasty
20 scenes. Those movies are about bad sales, but they waive
21 them around like they are wonderful things. They play them
22 the worst clips from those and say this is it.

23 The sales bible, role playing, taking live calls.

24 Adam Persails was number one in the class. Why?

25 Because he knew a thing about loans? No, because he could

1 sell. That's how he got to be number one in the class and
2 he got to talk to Mr. Gilbert.

3 Ongoing training. They are plugging into the phones.
4 They are dragging people into the listening room. They are
5 sending emails all about the sales process. Saying, oop,
6 you didn't pivot here, you should have closed here, you
7 didn't push the bruise there, you failed to find the
8 emotional hook and use it to your advantage. They are not
9 pulling them into the room and going, you know, I know you
10 sold this loan to this person and they bought it and it went
11 through and it closed, but it really wasn't the best one for
12 the client. Now, you sold this kind of loan. This kind of
13 loan would have been better. Now, I know you earned the
14 commission on it and we got paid our profit on it, but --
15 where is that training?

16 You picked an okay one for the client, but you raised
17 the green bar a lot and they didn't get the best price on it
18 and really under their circumstance this one would have been
19 better. Where is that training? That's nowhere to be found
20 because that's not what these people are supposed to do.

21 Emails from trainers. This is ongoing. They had a
22 training team during this time period that was ramming the
23 sales process down their throat. Here is a good one, and
24 this goods right to it.

25 Just listening to your calls this week it is

1 evident that you have vast knowledge of the
2 mortgage industry as well as our products
3 here at Quicken. The key is not to let the
4 knowledge deter you from the task at hand.

5 Hey, man, you know too much about mortgage. You heard
6 Mr. Thompson testify that he was critiqued for too much
7 knowledge. You heard some others testify that they were
8 actually reprimanded for agreeing with customers that, yeah,
9 you are probably okay where you are. That's not it. That's
10 not their job. Their job is to sell.

11 Here is the other one. Here is another one. This is
12 an emotional hook one. A little gopher with a jackhammer.

13 Get down there, find their emotional
14 benefit -- into the client's emotions before
15 you move for your close.

16 Man, you can't close effectively unless you are tied into
17 their emotions.

18 Here is a great one.

19 Listen to this call clip, everybody. This is
20 a person that sails through the sales
21 process, got a full application, did
22 everything in 30 minutes.

23 There is some deep digging going on there, and that's
24 awesome. I mean, that's awesome. The faster you can do it,
25 the better. That's clear because that's sales.

1 Here is another one. Oh, we already talked about this
2 digging deep, finding the pain. Digging deep means briefly.

3 Here:

4 He goes into the close with a hard forced
5 close choice -- in other words, Visa or
6 MasterCard -- yet fails to really ARC the
7 client's spousal objection and really push
8 the bruise.

9 He didn't make fun of the person for saying they wanted
10 to talk to their spouse. The didn't push the bruise or
11 whatever. Maybe they had a bad credit score or something on
12 their credit score that they could have pushed at. They
13 didn't do it.

14 Please work with Nigel on his controlled
15 release of information.

16 Nigel is giving too much information.

17 And ARcing skills.

18 He's not acknowledging, responding and closing like he
19 should.

20 Provide us feedback regarding how you will
21 address this with him no later than the end
22 of the day Wednesday.

23 This is to a manager, telling a manager how to get this
24 loan consultant in line with how you do this job.

25 Here is the sales process. Now, I want to talk to you

1 about the sales process. At our table we were calling it
2 the toxic exhibit because, I don't know if you have noticed,
3 Quicken representatives or lawyers did not touch this thing
4 throughout the entire trial. I mean physically touch it.
5 We had bets as to when one of them would actually touch this
6 thing.

7 And they even fought over whether it was mandatory or
8 not. This is the sales process. This is training
9 encapsulated on two sheets of paper.

10 This is awesome, it really is. If you're a
11 salesperson -- you heard Mr. Farner. They have got people
12 breaking into Quicken to learn the sales process. They have
13 to be careful not to hire people who are just coming in to
14 learn the sales techniques and go out and sell something
15 else, nothing to do with mortgages or finances. This
16 process is awesome. You could sell anything with this. You
17 really could. It's amazing, and it's good.

18 They won't touch it. They didn't touch it. In fact,
19 they have tried to disown it, which is impossible. They
20 can't disown it, but they have tried.

21 Here is Mr. Farner, April 2003. Remember, this is a
22 company that in this trial told you this isn't mandatory,
23 and we went from it's not mandatory to you don't have to
24 follow it word for word. We never said you had to follow it
25 word for word. We said you had to follow the script, and

1 that's what they say, follow it. You may get spun out
2 somewhere and have to come back, but you follow it. You
3 don't have to read it word for word. We never said that.

4 Then they talk about, well, it wasn't mandatory.
5 Mr. Baumann didn't use it. Well, Mr. Baumann has been
6 around for ten years at this point. He's been there before
7 this even existed. He had his own version of this, his own
8 sales technique, a foundation by then. He had his own
9 foundation. But, other than Mr. Baumann, the people that
10 started in 2002 to 2006, this is the ticket to success, and
11 you have to use it.

12 Here is Mr. Farner in April of '03.

13 Lock out everything going on around you and
14 concentrate on only one thing, the sales
15 process. Forget when lunch is. Forget that
16 your buddy wants to take a smoke in
17 ten minutes. Forget the client is giving you
18 bogus objections.

19 Oh, those bothersome clients with bogus objections.

20 One simple message [all caps]: Follow the
21 sales process. Challenge yourself. Between
22 the calls coming in and leads you follow up
23 on, follow the sales process [all caps] on
24 every call. Not 99 percent, every call.

25 Here is Tim Birkmeier. He grew up with Jay Farner. I

1 call him the new Jay Farner. He is now in Jay Farner's spot
2 in that VP role.

3 Continue to sell and use the All-American to
4 your advantage --

5 Again, that is the loan consultant's advantage, not the
6 client's advantage.

7 -- just as you have, and make sure to ask all
8 the right questions/follow the sales process
9 prior to even considering mentioning rates or
10 investment dollars. Great job selling
11 yesterday, everyone, and keep the momentum
12 rolling today. The world is yours.

13 It's not the client's, it's yours. It's yours because
14 if you keep selling and following the sales process you are
15 going to earn commission, and that's a good thing. That's a
16 good thing for a salesperson.

17 Here is Bill Pellow warning his team.

18 It was just brought to my attention that all
19 of the higher-ups, Dan Gilbert and his
20 entourage, will be listening to phone calls
21 (ours in particular) for the next week. So
22 please do yourself a favor, make sure you
23 close and close often. This is not a threat,
24 it is the facts. So, please, follow the
25 schedule, call blocks, sales process,

1 et cetera. You know I will keep you in the
2 loop.

3 That's the Dan Gilbert, by the way, who claims he
4 didn't know any of the these phrases. Remember when I went
5 through with him about foreshadowing? I don't know what
6 foreshadowing means. He didn't know any of these things.
7 He's listening in to see if they are following it.

8 And let's listen to Jay Farner's voice mail on this
9 issue about whether they had to follow it. This is
10 January 2004.

11 (Voice mail played.)

12 **MR. LUKAS:** I guess the theory is because no
13 one testified that they actually got a strike that it wasn't
14 mandatory, you didn't have to follow the sales process. Did
15 that sound voluntary to you? This is the boss over all loan
16 consultants. Does that sound voluntary to you?

17 The fact that no one got a strike tells me a lot. They
18 got the message. They got the message. The boss says
19 follow the sales process. All right, I am in. And that's
20 what they did.

21 Other interesting things from that voice mail? Sell,
22 sale, everything you need to sell, follow the sales process.

23 Knowledge Connection. They have a website. Remember
24 Exhibit 19? You probably don't. That probably seems like
25 100 years ago. Last week they were trying to say that's not

1 ours. That was printed off of a web page of -- I can't
2 remember the name -- SureSpeak's web page. That was their
3 document. Look for the QL and the bottom right-hand number,
4 the QL and a number. It's their document. It's part of the
5 Knowledge Connection.

6 You can go on the website and pull off all of
7 the stuff you need to pull off.

8 Find out if they qualify. If not, get off
9 the phone.

10 That sure wraps it up.

11 And, finally, I don't know if you picked up on this, if
12 you listen to it again you will hear it.

13 If you practice, you don't even have to
14 think. It just happens.

15 Well, I would hope my adviser and consultant is
16 thinking. I understand salespeople not necessarily, their
17 job is to close.

18 How else do we know?

19 So that's the sales process. Apparently they don't
20 have to use it really, it's just voluntary. That's
21 nonsense.

22 How else do you know their primary duty is sales?
23 Motivated monitor. We have been through this.

24 Sales goals. Daily sales goals, monthly sales goals.

25 Jabuaries. I mean, how would you like to be that poor

1 guy at the third week in January who actually was meeting
2 their goal? Now they have got a new January goal. My
3 goodness.

4 That's what it was like there. That voice mail is what
5 it was like there. Mazey's voice mail is what it was like
6 there. The Mazey's of the world were under a lot of
7 pressure under these sales parameters, and so were their
8 loan consultants because of it.

9 Boards, performance boards, writing your boards.
10 Everyone in the whole place could see how you are doing on a
11 daily basis.

12 Stand and Deliver, how about that team? You stand.
13 They take your chair away until you sell a deal, and then
14 you get to sit down. How humiliating.

15 I have got a bunch of emails, but you have seen them
16 all, on motivational efforts, and they are from everybody,
17 Dan Gilbert, Jeff Perry, Jay Farner, Tim Birkmeier, selling
18 with energy.

19 Here is another Tim Birkmeier. This is one of my
20 favorites just because we know the context. This is the one
21 where the day he tells -- after Jay Farner's voice mail,
22 Tim Birkmeier tells his team I'm your heat shield. I don't
23 know if you remember that email. I'm your heat shield. The
24 next day he sent this one out saying here is all of the
25 things you better do today. Oh, I'll CC Jay Farner.

1 Showing off for Jay Farner. Tim Birkmeier heard the voice
2 mail.

3 Sean Glensmith:

4 I'm in the trenches with you. Who is selling
5 with me?

6 Call blocks. This was from Tony Nuckolls. We heard
7 a lot about call blocks early on. We didn't hear as much
8 later. Call blocks, daily call blocks, sometimes multiple
9 call blocks in a day. They have no choice. Get on the
10 phone, call blocks.

11 This one is one of those goofy ones.

12 At the beginning of the second call I want
13 everyone to get off the phone, stand up, clap
14 repeatedly 20 times and say yes, yes, when
15 Mark Mazey pulls his hand down. That means
16 get to work.

17 That brings me to my next point. Why do we know this
18 place is sales? Why do we know their primary duty is sales?
19 Here is a board. Firm versus firm. You have seen all of
20 those emails over and over.

21 Why do we know it's sales? The work environment
22 itself. It's a call center.

23 They say, oh, it's not a call center. Well, what do
24 you call something when you put 1,000 people in it in cubes
25 in an open area with headsets on? It's a call center.

1 They are making calls. They have headsets. They are
2 in cubes. Their managers roam up and down the aisles. They
3 get free Red Bull. They bang gongs, they ring bells and
4 toot whistles when they bag a deal. They have chicken
5 nugget eating contests. They throw Nerf footballs all
6 around. Juvenile, I heard it called. Frat house-ish I
7 heard it called.

8 Are they trying to convince you this is an environment
9 of financial advisers and consultants? Ridiculous. It's
10 silly. It's a sales environment.

11 How else do we know it's sales? I guess the last piece
12 I would say is what wasn't sales? What did they do that
13 wasn't sales or closely related to sales? What was it?

14 Calling? They would say, oh, this wasn't sales because
15 we had hot leads for these people. Hot leads? You saw the
16 emails of conversion. This is Mr. Farner's expectation of
17 growth. We went through that. I'm not going to show that
18 to you because I'm running out of time.

19 But, you know, Mr. Farner, Mr. Gilbert, the money keeps
20 getting bigger and bigger and bigger. I went through that
21 with I think it was Mr. Gilbert's cross-examination. The
22 money gets bigger and bigger and bigger, and the
23 expectations on these people of how many they should sell a
24 day gets bigger and bigger and bigger as we go.

25 Let's go back. What wasn't sales? Calling. They say,

1 well, this isn't sales because these are hot leads. The old
2 job was sales because you had to pound the pavement for your
3 leads, but this, we give them hot leads so it's not sales.

4 Why are dials per day critical? Why is Jay Farner
5 telling people in the April voice mail that I didn't play
6 for you 60 calls a day if you're old, 80 if you're brand
7 new?

8 Why is that so important? We know why it's important,
9 because we saw their conversion rates. Their conversion
10 rates, 1.72 more than halfway through August of '04. And
11 this one, I believe, was calls to applications taken. I'm
12 sorry, leads to applications.

13 This one, May, it was 2.75. June, it was 2.54. July,
14 it was 3.16. This is to folders back, I believe.

15 So this means that you get 100 leads, these super hot
16 leads from Quicken that they characterize them as, you get
17 100 of them, okay, if you are an average loan consultant at
18 Quicken in May of 2004, you got 2.75 applications out of it
19 or folders back out of it. That's not loans closed that
20 they actually got paid on. That's when they got the folders
21 back.

22 Then it went to underwriting, who did their thing;
23 processing, who did their thing; compliance. All of people
24 who say whether it really gets to be closed or not, okay,
25 that's before all of that happens. 2.75 in May.

1 And they say that's not cold calling. That is pretty
2 chilly because we also know phone calls. How many phone
3 calls? It's not that you get a lead and then you call them
4 once and then you are done. You saw the emails.
5 Four times, five times you are supposed to call these leads.
6 Which means you could be making three, four, five hundred
7 phones calls to get 2.75 folders back.

8 You saw Dakota Denison, 24 times, one person, and he is
9 awesome. He was and he is an awesome salesperson, but that
10 conversion rate, to say that it's not cold, this is freezing
11 cold. That is inside sales cold. That's harder than
12 hitting the streets, and hitting the streets is sales, too.

13 Follow the sales process. So they are on the phone,
14 they call, they finally get somebody, what do they have to
15 do? Follow the sales process. I challenge you to find
16 anything on these two pages that isn't sales.

17 Ms. Booza said and Mr. Emerson and all of the Quicken,
18 oh, it's just this Step 7 where I'm actually ARcing and
19 closing and asking for Visa or MasterCard. You read this.
20 You tell me what isn't sales in here. It's all sales.

21 Okay. They follow the sales process. They close.
22 They get an app. They enter it into the system. Entering
23 it into the system, is that closely related to exempt duties
24 of advising, consulting and analyzing? No. It's closely
25 related to sales. They just made a sale. They are putting

1 their sale into the system.

2 They send the docs for signing, the docs that the
3 system kicks out for them they send out. They get them
4 back. We also heard from the testimony that takes some
5 selling, too, because in between the phone calls and sending
6 out the documents the customer maybe gets cold feet, maybe
7 talks to another loan consultant or something happens. They
8 may have to resell the thing or have to convince them, sign
9 it, sign it, send it back. That's sales.

10 And they get it back, they pass it on, and the other
11 people do their thing, and sometimes it gets kicked back.
12 Underwriting goes no, no, no, they didn't give us enough
13 income docs, I need W-2's from 1998. The loan consultant
14 has to hunt that down. Is that anything but production or
15 closely related to sales? No.

16 Otherwise, other people are doing their primary duty,
17 and that's Mr. Emerson's email.

18 Oh, this is all the lead sources. You will see in
19 Exhibit P138 they have a list at the end. It's kind of
20 interesting. I should have mentioned this to you.

21 They have all of the lead sources and the conversion
22 rates of those lead sources. It's kind of interesting.
23 Like, QuickenLoans.com, 33,000 leads, 4.74. That one is a
24 rocket ship practically compared to some of these. 18,000
25 LowerMyBills.com leads, 1.74 conversion rate on those, but I

1 digress.

2 There is a primary duty for everybody on Mr. Emerson's
3 team. Do you remember Mr. Emerson talking about team? Here
4 is his email, and I think this is a good email because it
5 incapsulates how the place runs and who has what primary
6 duty as we march through this list.

7 The sales force who brings it in. He confirmed for us,
8 yes, indeed, that's the loan consultants. The operations
9 staff who gets it out. That's processing, the processing
10 department, underwriting department, there's a suspension
11 team, there's customer care representatives, there's
12 customer relations specialists, there's compliance.

13 He goes on. The source who closes most of it. There's
14 a closing group, and if you go through this email, he ticks
15 them all off. They all have their primary duty.

16 There's the bridge. There's IT. There's legal. We
17 have seen legal, we have seen legal in action with all of
18 the documents they are sticking in front of these people on
19 their first day at work.

20 They all have a primary duty, and it all starts with
21 the loan consultants with the headsets on pounding the
22 phones bringing it in, the sales force.

23 Now, what does the defendant do with all of this? As
24 you will remember, ironically, it's their burden to prove
25 its not sales, okay? So it's their burden. We show you all

1 of that. How do they respond?

2 And I want you, when you think about how they respond
3 and how they are going to respond in closing, think about
4 what they have at their disposal versus the 25 loan
5 consultants or plaintiffs that came in here and the other
6 300 that we represent. What does Quicken have at their
7 disposal versus what they showed in this courtroom?

8 Emails. Remember, oh, there's hundreds of thousands of
9 emails and they just cherry-picked 20 or 30 that have the
10 word sales in them. You look at my binder, and my binder is
11 right there, that black one, that is full of the word sales,
12 not 20 or 30 times. I didn't even count.

13 But what do they show you? Where are the hundreds of
14 thousands of advising, consulting and analyzing emails? I
15 counted them. 23 emails they put into evidence in this
16 case. 23 emails. Is it because we, the outsiders, had all
17 of these emails and they didn't have any? No. They put in
18 three, and the reason is because those emails aren't out
19 there. Calling it sales and saying sell, sell, sell isn't
20 some lucky little nugget we found. That's what they do.
21 That's what they say. That's the job.

22 23 emails. 11 of them come from Mr. Banfield, who is
23 not even a loan consultant, he's in secondary marketing, and
24 those are those pricing ones. Holiday special, remember
25 those emails? 11 of them.

1 We had three from Ms. Maull, who is a plaintiff in the
2 case, and they thought those were going to be advising and
3 consulting ones, remember? She told -- Ms. Srey asked her,
4 well, what did you do? How did you know how to respond to
5 that? LOLA kicked it out. Lakewood kicked it out. Told
6 her exactly what she needed, what documents to give,
7 et cetera.

8 There are three resignation emails in the group of 23.
9 So that's 11, 3 and 3. That's 17 of them.

10 There's an April Fool's joke from Mr. Gilbert about the
11 parking lot. That's 18.

12 We got one from Mr. Emerson talking about clients first
13 and the motto and how important it is. That's 19.

14 We have one post-lawsuit inquiry from a loan originator
15 asking Mr. Farner about hours and whether he has to work
16 a lot of hours or not. That's 20.

17 We have the one from Mr. Farner talking about ARM's and
18 fixed. We have one from Mr. Farner telling Ms. Williams,
19 who is a loan consultant -- Ms. William wanted to know can
20 someone take out two HELOC's, home equity loans, on
21 two different properties? No, you can't.

22 Okay. And one to Mr. Ortman on the consumer price
23 index, and not even he, I believe, understood what it meant.

24 And those are not advising and consulting emails.
25 Those are trying to help these people sell. 23 emails.

1 Look at their emails.

2 Call clips. That's their call clip library. How many
3 call clips did you hear from them? None. Did you hear any
4 advising, consulting and analyzing call clips? No.

5 Voice mails. We were fortunate to get a few and have a
6 few, and we played them for you. Did they play any voice
7 mails advising, consulting or analyzing? No.

8 Training documents. We heard, oh, the training
9 documents are like this and only this much is selling, just
10 a little nugget. Where are the training documents? We gave
11 you apparently the little nugget. I didn't see the rest of
12 it.

13 Trainers themselves, the witnesses, where are they?
14 Where are they saying, you know what, we didn't play Boiler
15 Room. We didn't play Glengarry Glen Ross. We didn't give
16 them the sales bible. They didn't come in here and say that
17 because it wouldn't be true. They did. They did all of
18 those things.

19 Where are the trainers who are training these people on
20 advising, consulting and analyzing? They don't exist.
21 That's why they didn't call them.

22 All they bring us is talk time. Aha, they were only on
23 the phone for two, two and-a-half hours a day. Well,
24 Mr. Farner and Mr. Gilbert testified that's normal. They
25 did an analysis of our clients' talk time, but not

1 everybody's. Mr. Farner's and Mr. Gilbert's testimony is it
2 would have been the same for all of them, two to
3 two and-a-half hours a day, and the judge will tell you
4 primary duty isn't measured based on how many hours.

5 But, frankly, that's their rule. The reason they put
6 in talk time is because they are claiming that the only
7 sales is when they are on the phone, and not just on the
8 phone, on the phone in Step 7 going Visa or MasterCard, Visa
9 or MasterCard. That's why they put in talk time.

10 So we got talk time from them, right? So where is the
11 rest of their information their superior technology can
12 bring?

13 We got some explanation for the exhibits and emails we
14 had. Oh, it was a poor choice of words. Instead of sell
15 these fools, I should have said advise, consult and analyze.
16 I didn't really mean what it said.

17 When it says push the bruise, it really means, you
18 know, find out, you know, their problems and solve them.
19 That's what push the bruise means.

20 Oh, it was just a joke.

21 They know me. I didn't really mean it.

22 The last one we heard last week, that's not our
23 document. Exhibit 19. Look at Exhibit 19. It is produced
24 by defendant. It has their Bates stamp number or their
25 number on it, QL with a number. It says Quicken all over

1 it, and it tracks the sales process verbatim. And last week
2 it was, oh, that's not our document, that's SureSpeak's
3 document. That was a new one. That's what we got from
4 them.

5 What else did we get from them? We got a bizarre
6 definition of sales, a couple of them. It's sort of a
7 moving target. We started with it's a spillover from the
8 '90's. That's why this word just kind of trickled -- it
9 doesn't mean anything. You know, it doesn't mean anything.
10 It's not really true.

11 And I guess the theory is it was more of a sales job
12 back in, back in the '90's than 2002 to 2006. Think of how
13 ridiculous that is. Back when there was no sales process,
14 no sales training program, no sales trainers, no call
15 center, no dial requirements, no teams, no production boards
16 outside your cubes, no LOLA or -- highly sophisticated LOLA
17 or Lakewood, no bridge, no fully automated process. But
18 that was more sales than this?

19 And you knew I had to show you this just because I love
20 Mr. Mortgage, but it's not just because I love Mr. Mortgage
21 that I kept coming back here. I want kept coming back here
22 because this is their document from 1999, and I know it's
23 talking about '99, but encapsulates their theory going into
24 2000 and this is how they executed.

25 Mortgage in a Box is a lifesaver for the

1 sales managers at Rock. As their sales
2 force -- loan consultants -- no longer have
3 to take hours out of their day to sit through
4 applications with their clients, they can
5 focus more of their time on selling -- which
6 translates into incremental loan applications
7 and profit for the company.

8 That's what they did. All of their efforts and what
9 really made them genius was taking away everything but
10 selling from loan consultants. And they got LOLA up and
11 running so they could just plug it in and spit it out. They
12 got Lakewood up and running so they could just plug it in
13 and spit it out.

14 That's what they did, and it was brilliant. No debate.
15 It was a wonderful, amazing system, but if anything, we went
16 from sales here in the '90's to sales [indicating], not the
17 other way around. It's completely ridiculous. They carried
18 this theory forward, and they really improved and did great
19 and turned it into sales.

20 The second one we got was -- so the first one was,
21 well, it spilled from the '90's. That's why we had the word
22 sell and sale all over.

23 The second one was, well, it was a shortcut. It's a
24 shortcut reference for advise, consult and analyze. When we
25 say sell, we really mean advise, consult and analyze.

1 We had this bizarre -- Mr. Farner and I had this
2 bizarre conversation, well, when you sell here -- and they
3 admit because they have to admit there is a sales component
4 to it, but it's just that little Step 7 nugget. Just the
5 ARC, that's it, okay?

6 And so then I kept on asking Mr. Farner: Now, is this
7 sell meaning advise, consult and analyze or is this sell
8 meaning that little nugget? Remember, in every document we
9 talked about it. It just got ridiculous.

10 Remember this one?

11 So after this two-day marathon selling spree
12 where all of you put everything you had on
13 the line, how do we handle Friday?

14 And I said selling. He said, well, that's the advise,
15 consult and analyze.

16 I see. So after a two-day marathon, advise, consult
17 and analyze free.

18 Remember how ridiculous that got? It got ridiculous
19 because it's a ridiculous excuse for trying to say something
20 isn't what it is.

21 The last one we got that was sort of developed at the
22 trial was asking for the business. It's just asking for the
23 business. That's the only sales component to it is just
24 asking for the business. Never mind that this entire thing
25 is designed to position the person to ask for the business,

1 but it doesn't matter. Asking for the business, only Step
2 7. Ms. Booza actually grimaced saying it.

3 And you will notice all of their witnesses started out
4 saying it, and they got less and less convinced, even by --
5 and they couldn't take it. You could tell.

6 Mr. Emerson even, near the end of my cross-examination
7 I tried to get him to say it again. He couldn't even get
8 himself to say it again. He said, well, you know how we
9 define sales, I think we have handled how we define sales,
10 because it's ridiculous, asking for the business.

11 What sales job would be sales if that's all sales was?
12 I asked Mr. Emerson about a car salesperson. He doesn't
13 know what a salesperson does. Maybe that's the problem.
14 Maybe Quicken doesn't know what salespeople do, and that's
15 why they think it's just this little tiny nugget. No.

16 A car salesperson? That would mean you would walk on
17 the lot and the car salesperson would say buy this car.

18 Hi, how are you? Buy this car, buy this car.

19 Actually, hi, how are you wouldn't count because that's
20 building rapport, and Ms. Booza said that's not sales.
21 That's not Step 7.

22 It's just silly. Under their definition of sales the
23 only one I could come up with is a beer vender at a ballgame
24 because a beer vender walks around and goes beer, beer,
25 beer, beer. Under their definition of sales, that person is

1 a salesperson. But, you know, actually he's probably more a
2 marketer because he's not walking up to an individual
3 consumer and going beer, beer, beer. He's generally
4 marketing to the marketplace, beer, beer, beer.

5 Cigarettes? Buying cigarettes was the analogy we got?
6 The last I checked you could buy cigarettes by walking up to
7 the counter going give me that pack and the person goes
8 (indicating). The person who is the clerk, the person who
9 is running the register.

10 I'm not sure how that one fits. It's ridiculous. In
11 fact, it's a little insulting, and it was a waste of time.

12 So let's get to it. Let's get to the example. Let's
13 get to the law. This is what the judge is going to tell
14 you.

15 The judge is going to tell you -- and there is our
16 punchline, by the way, at the bottom. Here is what the
17 judge is going to tell you.

18 Employees in the financial services industry
19 generally meet the duties requirements for
20 the administrative exemption if their duties
21 include work such as collecting and analyzing
22 information regarding the customer's income,
23 assets, investments or debts; determining
24 which financial products best meet the
25 customer's needs and financial circumstances;

1 advising the customer regarding the
2 advantages and disadvantages of different
3 financial products; and marketing, service or
4 promoting the employer's financial products.

5 However --

6 Even if they do all of those things, which I'll talk to you
7 about in a moment, they don't do them all.

8 However, an employee whose primary duty is
9 selling financial products does not qualify
10 for the administrative exemption.

11 They could do those four things up in white, they could
12 do those four things perfectly every time and it doesn't
13 matter because, if their primary duty is sales, that
14 overrides it.

15 But let's talk about these four things.

16 Collecting and analyzing information
17 regarding the customer's income, assets,
18 investments or debts.

19 Collecting for sure. Yeah, they collect stuff for sure
20 because they need to know those things so that they know
21 whether or not they qualify for a Quicken Loans matrix.

22 Analyzing it? Not so much. They get the score, they
23 look at the matrix, they go, sweet, the person qualifies, I
24 can sell them what they want.

25 Number two:

1 Determining which financial products best
2 meet customer's needs and financial
3 circumstances.

4 Not so much. The financial product is always a
5 Quicken loan, and sometimes that one is true because if the
6 customer's best interest lines up with Quicken's sometimes,
7 but then there is always that green bar, there is always
8 that bruising, there is always creating emotion, creating
9 need, pivoting, all of those things that really aren't in
10 the best interest of the customer's needs, all of those
11 sales things that get in the way. So that one not so much,
12 but sometimes, sometimes.

13 Advising on advantages and disadvantages. Advising on
14 advantages, for sure. Man, they are all about advantages.

15 And you even heard Ms. Booza in her call clip. All
16 advantages, no disadvantages. When I asked her about that,
17 she said, well, that would be speculating. Well, the
18 advantages they are giving these people are speculative,
19 too.

20 They don't talk about disadvantages. They talk about
21 advantages. So that one is a flatout no. It's a yes on the
22 advantages, for sure.

23 And then:

24 Marketing, servicing or promoting the
25 employer's financial products.

1 That one, we know they have a marketing and promotions
2 department that work there. We know they don't service the
3 loans, they sell them, so they just flatout don't meet
4 number four.

5 But it doesn't matter. Let's say they did meet all
6 four of those perfectly, every time. It says:

7 However, an employee whose primary duty is
8 selling financial products does not qualify
9 for the administrative exemption.

10 That's why these people get overtime.

11 There is the more general law that the judge will start
12 out with about the general business operations and about the
13 discretion and independent judgment, and he will read
14 through all of those things and there's a lot of law that
15 define those things before you get to this and then you will
16 hear the magic language:

17 However, an employee whose primary duty is
18 selling financial products does not qualify
19 for the administrative exemption.

20 Then you go, well, boy, maybe there is an escape hatch for
21 them in this one or something, huh? No, there isn't because
22 if their primary duty is sales they meet both, they lose on
23 both elements, and that's why it's worded the way it's
24 worded: However, primary duty is selling does not qualify
25 for the administrative exemption.

1 But I'll tell you briefly why they fail on this part.
2 General business operations. What is general business
3 operations? The judge is going to tell you it's performing:
4 work directly related to the management or
5 general business operations . . .

6 - - -

7 To meet this requirement, an employee must
8 perform work directly related to assisting
9 with the running or servicing of the
10 business, as distinguished, for example, from
11 working on a manufacturing production line or
12 selling a product in a retail or service
13 environment.

14 And this is the general rule, and they apply this
15 general rule to here, and if you are selling financial
16 products, that's production work and you don't meet this
17 test, okay?

18 And here's the distinction, and this will probably make
19 it easy for you to understand. Servicing the business, in
20 other words, are you doing the work that keeps the business
21 running while the people who are making and selling what the
22 company exists to make and sell are doing? In other words,
23 are you an internal person that isn't necessarily making the
24 company money, but you are servicing the business to keep it
25 running?

1 Here is a list of the examples that the judge will give
2 you. These are the kinds of examples that service the
3 business as opposed to sell or produce:

4 Tax, finance, accounting, budgeting and
5 auditing; insurance; quality control;
6 purchasing and procurement; advertising and
7 marketing; research; safety and health;
8 personnel management and human resources;
9 employee benefits and labor; public and
10 government relations; computer network,
11 internet and database; legal and regulatory
12 compliance.

13 They clearly don't do any of these things, and that's
14 why they fail on that general test even without the rule
15 about, however, if their primary duty is sales they fail.
16 Because these people are not doing internal work to keep the
17 company running. They are producing.

18 Even if you say, okay, it's all sales, but they put
19 that, they enter that into the system and I'm not going to
20 say that's directly related to sales. Okay. What is it?
21 It's production. It's production work. So even then, no
22 matter where they turn -- and they are not doing these
23 things. They are just not doing these things. These are
24 the things the judge is going to tell you fit the
25 administrative exemption.

1 So the specific selling financial products doesn't work
2 for them. The general doesn't work for them.

3 You say directly related to the management or general
4 business operations. Here we go, how about customers? You
5 know, it says at the end the internal workings of
6 Quicken Loans or its customers. Maybe that's it. What's
7 that for?

8 Individual consumers don't have general business
9 operations, so that doesn't save them either.

10 Plaintiffs were not assisting with the running or
11 servicing of an individual's business. They are selling
12 loans to a consumer.

13 Julie Booth is a classic example of what customer means
14 on the end of that phrase. Ms. Booth testified she worked
15 at Ernst & Young, one of those accounting firms, and Ernst &
16 Young sent her to Quicken to do accounting. That is a
17 person who is servicing a customer's business. That's not
18 what we have. That's right here: Tax, finance, accounting,
19 budgeting and auditing. One company is sending their person
20 to another company's to service it. So that's that.

21 Discretion and judgment.

22 So we've got the first test. They lose on the first
23 test because their primary duty is sales, number one.

24 Number two, they lose because they are not doing one of
25 these types of jobs. They are not servicing the business.

1 Number three, they lose because they are production
2 workers, if nothing else.

3 Okay. Then we go to the second one.

4 Plaintiffs' primary duty included the
5 exercise of discretion and independent
6 judgment with respect to matters of
7 significance.

8 And, by the way, they have to win both of these.

9 All right. This one they lose for four reasons. This
10 one has a long -- the judge is going to read a lot about
11 what this means, a couple of pages before we get to however.
12 But, discretion and judgment, what does it mean?

13 Here are the four reasons they lose on discretion and
14 judgment. Number one is if it's matters of significance.
15 It's not just discretion and independent judgment.

16 Think about that. Every employee in America has
17 discretion and independent judgment: When they go to the
18 bathroom, when they take a smoke break, who they call first
19 maybe, whether they look at their pipeline first or whether
20 they make calls first. Everyone has it.

21 It has to be matters of significance. What are matters
22 of significance in the loan world? Qualifying for the loan,
23 pricing of the loan, underwriting requirements for the loan.

24 Ms. Booza and all of the other witnesses confirmed for
25 us they had no authority in that regard. If this person

1 does not qualify for a Quicken Loan under Quicken's
2 guidelines, end of story. They couldn't sell at a price
3 outside the range of Quicken's price sheet. They couldn't
4 ignore underwriting requirements. They had to follow them
5 to a T.

6 Number two, you must have:

7 Authority to make an independent choice, free
8 from immediate direction or supervision.

9 That goes back to the not having authority.

10 If they wanted to sell something -- I think Ms. Booza
11 calls it recommendations -- if they wanted to sell something
12 outside of the price sheet or something outside of the
13 underwriting guidelines or try to sell it to a person who
14 didn't testify, they had to get independent approval before
15 they went forward. Not that they had independent choice.

16 I think the judge will tell you, just because it's
17 reviewed later on doesn't mean they lose discretion and
18 independent judgment. That's not what's going on here.
19 It's not that they are making the call and then it just gets
20 reviewed later. They can't move forward without immediate
21 supervision on those issues.

22 Third reason:

23 Must be more than the use of skill in
24 applying well-established techniques,
25 procedures or specific standards described in

1 manuals or other sources.

2 In other words -- and Ms. Booza is another classic
3 example of this. She told you, well, after a while I kind
4 of internalized it. She said, yeah, I had to follow a
5 matrix, I had to follow LOLA, I had to follow Lakewood, I
6 had to follow the pricing. I had to follow those things,
7 but after a while I kind of internalized them.

8 And what this is saying is just because you internalize
9 them doesn't turn you into someone who is exercising
10 discretion and independent judgment, and they are not here.

11 And the last one is you can use manuals and that
12 doesn't defeat discretion and the independent judgment but
13 only if it's the type of manual that you have to interpret
14 by someone with advanced or specialized knowledge or skill.

15 And we know that's not the case here. These are people
16 they are hiring with all kinds of experience, giving them a
17 couple of weeks of training and putting them on the phone.

18 So everywhere they turn, everywhere they turn they
19 lose. They lose at the specific regulation. They lose on
20 the general regulation. Both prongs of it.

21 And the Court will read those to you, and like I said,
22 listen for the punchline: However, if their primary duty is
23 selling, it does not qualify.

24 So that's the law. It's pretty boring.

25 So why are we here? It is obviously sales. There is

1 no escape hatch. Make no mistake why we are here. We are
2 here because in 2004 Dan Gilbert told his people you will
3 not settle, we will not settle. His exact words were:

4 We will not settle-period.

5 We will not settle-period.

6 That's why we are here. This is Dan Gilbert's show,
7 and the reason we spent six weeks in trial trying to
8 determine whether the greatest sales force in America's
9 primary duty is sales is because six and-a-half years ago
10 Dan Gilbert said it will be so. You heard him. You saw his
11 live testimony. You saw him on the stand. This is his
12 show. He tells a lame joke, and that entire side of the
13 room laughs. That's the way it works, and that's the way it
14 should be. He's the boss and he says how it goes, and
15 that's what he said. He said fight this lawsuit, fight this
16 lawsuit, and that's why we are here.

17 Here is a really interesting thing from the email. He
18 gave this directive before knowing what the law was, before
19 knowing that the issue and the fight was over whether their
20 primary duty was sales or not, and he stubbornly sat here
21 through six weeks of trial, over seven years of litigation,
22 over whether the sales force's primary duty was sales.

23 How do we know that he didn't know the law when he
24 passed down this edict? Look at the subject line. I
25 pointed this out at the time. I want to point it out to you

1 again. Here is the subject line of the email:

2 Law firm works with ex-sales people in order
3 to extract settlement from your company.

4 He didn't know the law at the time. He didn't care. He is
5 not going to be pushed around.

6 Well, Dan Gilbert has to follow federal law, Quicken
7 has to follow federal law, and these people came in and they
8 fought and they fought for seven years over measly overtime
9 pay for short periods of time and not very much money
10 because he has to follow the law.

11 Let's move on. Let's talk about hours.

12 Okay. That's sales. Remember I stood up in the
13 beginning and said sales and hours. I don't know how many
14 times we stood up and we said sales and hours, sales and
15 hours, while they went off and attacked our plaintiffs on
16 everything but sales and hours.

17 Hours. The law protects misclassified employees. I
18 told you that from the beginning. The judge is going to
19 tell you that today.

20 An employer is not allowed to misclassify you and say
21 you are not, you do not qualify for overtime and then not
22 track the hours and then come back and go, aha, you can't
23 prove hours. They are not allowed to do that by law. What
24 the law says is when that happens and an employee was
25 misclassified by the employer and the employer did not track

1 the time, a jury or a judge can determine the hours worked
2 by a just and a reasonable inference.

3 And that's what we presented to you, the best evidence
4 we have, because they didn't track it. And the judge is
5 going to tell you what that means.

6 The evidence you consider for a just and reasonable
7 inference, the judge will tell you, is -- it's, it's all of
8 the things you heard knowing that Quicken did not produce
9 the time records and did not keep track of time.

10 What should you consider when you are doing your just
11 and reasonable estimate of hours? First of all, you should
12 consider the clients' testimony, the 25 plaintiffs'
13 testimony, okay?

14 And Ms. Booth, actually the defendants' witness, she
15 will be glad to see I'm using one of her slides, I am sure.
16 It's D201. I recommend to you, ladies and gentlemen, you
17 take out a pen and a piece of paper and you write down D201.
18 D201, she has a column where what the person -- what each of
19 our plaintiffs testified to. D201. And D201 has all of the
20 testifying plaintiffs' hour estimates that they made. She
21 missed Zane Kadro and Kelly Lytle. Zane said 70, and Kelly
22 said 60.

23 So if you take D201 and you take Zane at 70 and Kelly
24 at 60, you will have all you need to know if you didn't
25 write it down in your notes as to what each of these people

1 said their hours were. D201, Zane 70 and Kelly 60.

2 And when you do that and you average them all out, this
3 is where we end up with our 25 plaintiffs. I told you
4 between 60 and 70. I didn't know exactly where we would be.
5 It's between 62 and 64.5. That's the range.

6 So like, for example, the way we figured this out is if
7 a person said between 60 and 65, we took their high range --
8 or their low range, 60, everyone's low range and everyone's
9 high range. And everyone's low range averages around 62.
10 Everyone's high range averages around 64.5. That's right in
11 the wheelhouse where we landed.

12 Think about some of the plaintiffs' testimony. One of
13 the earlier ones, you may have forgotten her. I don't know
14 if you can forget this though. Nicole Lilly, her
15 11-month-old on a pallet. She made a bed. She would bring
16 her 11-month-old in after daycare, after hours so she could
17 work.

18 Now, they go, oh, come on, come on, lady, you didn't
19 bring your baby into Quicken every night. No way.

20 Weren't you waiting for the manager to come in and go
21 that is ridiculous, we didn't have a pallet bed for Nicole's
22 baby? You didn't hear that testimony because they did and
23 she did it because she wanted to earn commission. She got
24 the message, she understood her job, and she was there with
25 her kid working the hours.

1 Lindsay Tittensor, our first witness, testified that
2 they joked your chair is spinning if you left at your
3 scheduled time. Your chair is spinning. The Vault is open
4 late. Her team was The Vault. Voice mail, cell phones at
5 home. So she can go see her dying grandma.

6 Mona Vats wanted to go to church on Good Friday and got
7 her keys snatched from out of her hand in Cleveland.

8 Chanda Whitted. Remember Chanda? I always say Chanda.
9 It's Chanda, sorry. Dropped off on Sundays after church.
10 Did someone come in and go, no, that's nonsense, she never
11 worked Sunday? No, you didn't hear any rebuttal evidence on
12 that stuff because it's true.

13 She's pregnant and about to get fired because she's
14 just not into it. I imagine it's pretty hard to be into
15 60 hours a week in that environment, pregnant eight
16 and-a-half months.

17 Brian Stanczak, hit the 8's, hit 9's, he said.

18 Emanuel Lewis, Emanuel Lewis. I don't know if you
19 remember Emanuel. He's a nice young man. He's the loafer
20 of the bunch. He said 50 hours. Then we found out he was
21 going to college at the time. So the loafer of the bunch is
22 50 hours going to school.

23 We had specific documents from defendants. Their own
24 hiring letter said 55-plus. The schedule is 50 hours a
25 week, the schedule, and you heard all of our clients testify

1 they worked before and after their schedule because it was
2 goals, goals, sales goals, production, goals, goals.

3 Here is Mr. Mazey's day. That's almost 11, that's
4 10:50 scheduled.

5 Again, in connection with hours, let's talk about the
6 evidence we did not see, and we'll see that -- the judge
7 will tell you you can make a just and reasonable inference
8 and it can be just approximate. The defendant has to come
9 back with precise evidence of time worked, and they can't do
10 that. They have already admitted they can't do that. They
11 have said it over and over again, they can't. So they have
12 to negative the inference is what it's called, and that's
13 what they have been doing, negating the inference.

14 In their opening statement you heard defendant Quicken
15 say these hour estimates were absurd and impossible. That
16 must have been before they realized their own witnesses had
17 put in affidavits in this case saying the same thing our
18 clients were saying.

19 Ms. Booza, 50 to 65 hours. Mr. Thompson, 60 to 70.
20 John Bettis, 50 to 60, closer to 60. Bari Beckett, who you
21 heard on a call clip talk about 60 to 80. Those are their
22 people.

23 Thomas Ortman, he didn't last very long and he was
24 gone.

25 Brian Baumann, he's been there for 16 years.

1 Mr. Baumann testified 50 hours. He was there a decade at
2 that point, and that guy was pulling 50 hours a week.
3 Victor You said 50.

4 So, absurd? Impossible? On the contrary.

5 And I asked them all, is Colleen Booza exaggerating?
6 No, Colleen wouldn't exaggerate. The only difference
7 between Colleen Booza and Matt Thompson, they are not
8 exaggerators why? Because they didn't join this lawsuit.
9 That's what converts people into exaggerators and liars and
10 thieves. That's the only difference, because you joined the
11 lawsuit and you are on the other team.

12 How about other things? Did we see any attempt at
13 reconstructing time? Does Quicken strike you as a company
14 that's sort of technologically challenged and they just
15 can't get their act together?

16 They were asking questions of our clients: Who is at
17 212-659-7847? You called them 72 times in three months for
18 a call time average of whatever.

19 Are they challenged technologically? No, they are all
20 over it. They are all over it. They have security swipes,
21 phone logs, LOLA log in/log out, Lakewood log in/log out,
22 email with dates and times.

23 Was there any attempt to reconstruct? I'm not saying
24 perfectly. I'm saying take a person or a few people, try to
25 reconstruct some time and give everyone a feel for what it

1 was. No.

2 Ms. Booth testified, yes, there was, but we didn't see
3 it. So they either didn't do it because they knew the
4 answer or they did it and they didn't like the answer or
5 they started it and they saw where the answer was going, but
6 you didn't get it.

7 And they have all of the technology they need to give
8 us that time. They not only didn't keep time records, they
9 didn't bring the stuff that they could have brought.

10 And why? Because Ms. Booza wasn't exaggerating,
11 Mr. Thompson wasn't exaggerating, and the 25 plaintiffs
12 weren't exaggerating either. That's the way it was.

13 How about breaks times? Oh, man, we have heard a ton
14 about personal phone calls, surfing the web, shopping on
15 line, all of it. The judge is going to tell you:

16 Rest periods of short duration, running from
17 five minutes to about 20 minutes, should be
18 included in hours worked.

19 Even halfway through the examination I believe
20 Mr. Morganroth started saying, well, there's nothing wrong
21 with personal calls, but isn't it true? Well, if there is
22 nothing wrong with them, why are we talking about them?

23 Everyone makes personal calls at work. Everyone surfs
24 the web. Well, you sure as heck would be surfing the web if
25 you are working 12- to 14-hour days. I would imagine you

1 would have to make a few personal phone calls: Look, I'm
2 not going to be home or how was your day today, honey?

3 Less than 20 minutes, so what?

4 Fun time? That's Quicken time. Do you think
5 Chanda Whitted would rather be home with her four kids or
6 participating in a chicken nugget eating contest? Those fun
7 things, those fun and exciting things, that's for Quicken's
8 benefit so that they can keep the people there and keep them
9 energized and enthused and selling. That's where that time
10 goes and it's compensable under law, and the judge will tell
11 you that.

12 Meal breaks, same thing. If they take a meal break
13 more than 20 minutes, it's not work time, but it has to be a
14 true meal break, not eating at your desk, not working, not
15 sifting through things, not talking to managers, not
16 anything. It has to be a true meal break. These people are
17 not even getting true meal breaks.

18 Are they getting breaks? Yeah, they are not chained to
19 their chair. And if you are there for 12-, 14-hour days,
20 you can get up and move around, but it doesn't affect their
21 hour estimates.

22 And you heard the plaintiffs testify that when they did
23 their estimates they considered all the time they worked,
24 their entire period of employment, and they considered all
25 of the things that happened during those times, vacations,

1 holidays, what not, and then they averaged. Some weeks
2 maybe they went on a two-day vacation and they worked harder
3 the rest of the week. Maybe they only worked 60 that week,
4 and their estimate is 65. Well, the next week they worked
5 70 or whatever. They said that it was over the entire
6 period of time.

7 Exhibit D202, another one of Ms. Booth's exhibits. I'm
8 sure she's very happy we are going to use two of them. D202
9 has -- I think I have a slide of it, actually. Yeah, here
10 it is.

11 This is Ms. Booth, and what she did was she gathered
12 the information we didn't have, and thankfully she did. And
13 she gave us weeks in training, full weeks, partial weeks,
14 and we know that's their time.

15 And so what our clients did was our clients said taking
16 all of this time, understanding that in some of my training
17 I didn't work overtime, some of it I did, I had a vacation
18 once or twice maybe, I had a long weekend that I had to
19 fight tooth and nail for, and they took it all into account
20 and that's how they came up with their averages.

21 Ms. Booza, Mr. Thompson, the rest of the defendants'
22 witnesses did the same, and that's what they came up with.

23 They came up with, the plaintiffs came up -- oops,
24 wrong way -- with that range, 62 to 64.5, but it's going to
25 be your call what to do with respect to that.

1 Now, what about the non-testifying plaintiffs? The
2 judge is also going to tell you what I told you the first
3 day, which is the federal overtime law does not require
4 every single person to come in, they have what are called
5 collective actions, okay, and it allows employees to pursue
6 their overtime claim as a group in one case. It's called a
7 collective action.

8 Jurors do not have to hear from 350 people. Thank God.
9 The result is you can make a just and reasonable inference
10 for the other non-testifying plaintiffs based on the
11 evidence you heard, the representative evidence from the
12 plaintiffs and the other evidence you heard, and that's what
13 we'll be doing here.

14 And the judge will tell you that you will determine
15 whether or not you heard enough evidence to make what you
16 heard fairly representative of everybody, and the key factor
17 there is they are fairly representative, and the judge will
18 tell you, when the testifying and non-testifying plaintiffs
19 perform substantially similar work.

20 Well, the testifying and non-testifying plaintiffs
21 didn't do substantially similar work, they did identical
22 work, and you heard even defendants' witnesses admit it was
23 the same job, the same job duties. It was the same employer
24 expectations.

25 Again, Mr. Perry, Mr. Farner, they all admitted these

1 things. They had the same players, the same management.
2 Gilbert, Emerson, Farner, all the way down. The RVP's, the
3 sales directors. The same motivation, the same suggested
4 work hours, the same pressures, the same compensation plan,
5 the same firsthand knowledge of the position.

6 And those are the factors the judge is going to tell
7 you about. Substantially similar work, same job duties,
8 same employer expectations, same motivation, same suggested
9 work hours, same comp plan, same firsthand knowledge of the
10 job. You got all of that.

11 And the judge will also tell you there's no specific
12 number. There's no magic to 25. We could have called 15,
13 10, 5. There's no magic. We called 25, but it's not just
14 those 25 that you have in front of you. You have all of the
15 defendants' witnesses, their loan consultants that they
16 called, the Ms. Booza's and those people. Mr. Thompson, all
17 of those people.

18 We have all of the documents you have seen, all of the
19 emails you have seen, all of the voice mails, the call
20 clips. They all count when you talk about whether you have
21 enough to make a just and reasonable inference that the
22 non-testifying plaintiffs would have come in here and said
23 pretty much the same thing the 25 did and Ms. Booza did and
24 the rest of those people did, all subject to the same stuff.

25 And you also may remember when you talk about

1 representative, I asked Mr. Emerson, just so we are clear,
2 Mr. Emerson, you are making the same claim, you are saying
3 all loan consultants, their primary duty was not sales,
4 right? Right. So your legal arguments are the same with
5 respect to everybody, testifying and non-testifying, right?
6 Yes.

7 Okay, good. So he's not saying all of the
8 non-testifying people who weren't here, we had different
9 defenses for them. No, it was the same asking for the
10 business.

11 The same with hours. We had 25 plaintiffs. We had
12 defendants' witnesses, including the call clips. Here is
13 what else we had. Look at the 25 people we did call. Here
14 they are. I'll go back to that quickly.

15 Where is my magic slide? Here is the slide. The
16 Rachhana Srey special, right here.

17 The Employment Dates and Locations of Representative
18 Plaintiffs' and Defendants' Witnesses. This is a
19 color-coded job, and what it means is blue -- here is the 25
20 plaintiffs. Blue means they worked in Livonia. Purple
21 means they worked in Troy. Orange means they worked in
22 Laurel Park. Red means they worked in Cleveland. Green
23 means their activity covered every one of those places, and
24 the green is the Emerson, Gilbert, Farner.

25 Here is some of these manager types, Pellow, Perry,

1 Mazey. Look at Mr. Perry. Right across the board:
2 Livonia, Troy, Cleveland.

3 We have the dates covered. We have the locations
4 covered. In fact, you can even see when these locations
5 opened by when we have them covered.

6 I guess, on representativity, I guess the question you
7 need to ask is did you need to hear from 25 more plaintiffs
8 to get this? Did you need to hear from the 25 you heard
9 from? Did you need to hear from more than 10 of them?

10 Of course not. They are representative and their hours
11 are representative, and you should give the non-testifying
12 plaintiffs the same consideration that you give the
13 testifying witnesses with respect to where you come up with
14 the just and reasonable inference.

15 I want to talk to you quickly about some sideshows that
16 we had going on here. There's an old saying in the legal
17 profession: If you have the facts on your side, pound the
18 facts. If you don't have the facts on your side, pound the
19 law. If you don't have the law on your side, pound the
20 facts. If you don't have the facts or the law, pound the
21 table.

22 And that's what Quicken did in this case. They didn't
23 have the facts, they didn't have the law, so they pounded
24 the plaintiffs. We brought 25 of them in here, and those
25 brave people came in here and took their lumps. They dug

1 through everything they could find on these people, and they
2 pounded on them. What did any of that have to do with hours
3 worked or sales?

4 Adam Persails put on his job app that he went to a
5 community college in Florida. He put two community colleges
6 down, one in Florida. It turns out he partied at the
7 second one and didn't really go to school. He put it on his
8 resume or on a job application. Does that make asking for
9 the business their only sales activity? No.

10 This Adam Persails, by the way, who didn't even have
11 an Associate's degree from any community college, he was a
12 hospital orderly. I guess they are saying they wouldn't
13 have hired him if they had known he didn't take any classes
14 in Florida.

15 Zane Kadro. We brought him back with his plaque on his
16 Series 63. Why? Did it matter? No. But it mattered to
17 Zane Kadro. They accused him -- by questions only, no
18 evidence, questions only -- they accused him of not really
19 having his Series 63, not really having his Series 6. He
20 was so upset when he left, he went home and he went down in
21 his basement and he rummaged through his stuff and he found
22 his plaque. He is like that is outrageous. He calls FINRA
23 and says why aren't I on the website. They said, well, it
24 says right on the website if you got your Series 63 more
25 than 10 years ago it's not on here. So he got a transcript

1 from FINRA saying he got his Series 63, brought his plaque,
2 and we put him back up there. Because it mattered? No,
3 because he wanted to. And they were asking questions and
4 going after these people.

5 John Semilia, the only person who joined the case
6 before leaving the company. What happened to him?

7 He joins the case in Cleveland. Mr. Gilbert comes in
8 within weeks, within days, I think he said, and gives a
9 speech about thank you for your loyalty, this is an
10 outrageous lawsuit, and there sits John and then John gets
11 fired within days. He gets fired. And they come in here
12 and say it's because he lied. He's a lying perjurer because
13 on his license form he said he had never been suspended of a
14 license, and he lost his insurance license back in '02.

15 It kind of begs the question: When did they find out?
16 They said you were fired for it. He said, no, that's not
17 what happened. They didn't say that at the time.

18 By the way, it was Jeff Perry who fired Mr. Semilia.
19 We went to Cleveland and took Mr. Perry's testimony. They
20 didn't ask Mr. Perry a single question about John Semilia or
21 why he was fired, leaving only Mr. Morganroth's questioning
22 John Semilia as the only evidence, and the judge will tell
23 you what lawyers say is not evidence.

24 Kelly Lacey, one customer complaint in three years.
25 Successful loan consultant. Loved the place, hated to

1 leave. What did they do? Pull out that one customer
2 complaint and go through it line by line. And you got a
3 zero score here, didn't you? Afterward -- and this is a
4 year and-a-half before she left. The one thing they pull
5 out, they pounded her with it. Why? Does it have something
6 to do with sales or hours? No, because they have no facts,
7 they have no law.

8 My favorite was Hassan Bazzi. I don't know if you
9 remember Mr. Bazzi. Let's see if I can get him up here.

10 He's down here in the corner, kind of a mellow dude,
11 quiet, soft spoken, clearly not a fit at Quicken. No way.

12 Mr. Bazzi is my favorite because they had a stack of
13 stuff this thick. You maybe didn't pick up on it. They had
14 a stack of stuff this thick, and boy, they were going to
15 take it to Hassan Bazzi. And then they figured out they had
16 the wrong Hassan Bazzi, it was his cousin, and man, were
17 they bummed. Then after that all they could do is make fun
18 of him because he filed bankruptcy a year or two after
19 leaving Quicken. But, boy, they were going to go after him,
20 but they had his cousin, and that Hassan Bazzi apparently
21 had enough stuff, enough dirt, his cousin had, they had some
22 good stuff on his cousin, they couldn't wait, but not
23 Hassan.

24 These people, these 25 people had the nerve to stand up
25 to Dan Gilbert. They are low level. They don't get it.

1 And they have the nerve to say these people are dishonest,
2 lying, stealing, money-hungry, greedy people. They have the
3 nerve to say that when executive after executive takes the
4 stand and says sales doesn't mean sales, and I don't know
5 what salespeople do and I have never bought a car or
6 whatever.

7 The nerve of calling these 25 people liars when they
8 take the stand and they make people take the stand --
9 Colleen Booza takes the stand. How comfortable was she
10 saying that her job wasn't sales? Not very comfortable.

11 More sideshows, other sideshows. Signed agreements.
12 They didn't complain. They knew the deal at the time of
13 hire. The judge is going to tell you:

14 Under the FLSA -- that's the federal overtime
15 law -- the plaintiffs cannot waive, or give
16 up, their right to overtime.

17 - - -

18 The fact that a plaintiff has signed a
19 contract or agreement stating that they will
20 not receive overtime or told at the time they
21 will not receive overtime is not
22 determinative.

23 Think about that. So because Quicken's lawyers after
24 the lawsuit starts draft a mortgage banker's duties
25 statement, put it in front of the person on their first day

1 of work, they sign it, and they go, aha, these people admit
2 that's their job duty.

3 Wrong. You can't waive your overtime rights. Even if,
4 and this didn't happen, even if Quicken told these people on
5 day one you are entitled to overtime but we're not giving it
6 to you and you have to sign this paper saying I don't want
7 it, I fully understand it and I don't want it and I won't
8 complain, okay, even if they did that, which they didn't do,
9 that's not enforceable under law. You cannot waive your
10 overtime rights.

11 That's not what happened, by the way. They told these
12 people you don't qualify for overtime. Mr. Gilbert came in
13 and said this is an outrageous lawsuit, it's ridiculous,
14 your job duties don't fit.

15 But it doesn't matter because you cannot waive your
16 overtime rights. When you think about it, it makes sense.
17 Would there even be an overtime law if you could? What
18 employer with half a brain, with the army of lawyers that
19 Mr. Gilbert has, what employer wouldn't have every single
20 employee sign a waiver of overtime rights on the first day
21 of the job, when the person wants the job and is desperate
22 for the job? A lot of people would waive their overtime
23 rights. No one would have to pay overtime.

24 So that's a good thing, that law, and the judge is
25 going to tell you that's the law. And that was a bunch of

1 wasted time putting that stuff in front of these people and
2 going you signed this and you understood you weren't getting
3 overtime. So what?

4 Another one that was a waste of time, a sideshow: What
5 you would have been paid. You would have made more money
6 had you -- you made more money this way than you would have
7 if you had been paid overtime. Doesn't that kind of beg the
8 question? The question being: Well, how would I have been
9 paid?

10 You can be paid overtime and still earn commission.
11 You can be paid overtime and still get a salary. So what
12 are you talking about?

13 Yeah, if you want to say would they have made more
14 money, most of them made more money under this system than
15 if you only got 24K plus overtime, but who takes that job?
16 Would these people take that job? That's not what they are
17 told. They are told six figures, six figures.

18 So this whole thing about what you would have been
19 paid, that begs the question. What if Quicken had followed
20 the law? Pretty speculative, but I'm sure they hang on to
21 that commission because that's critical to their business
22 plan and they would figure that out.

23 I asked Mr. Gilbert, oh, are you saying it's impossible
24 to get paid overtime and get paid by commission? He said,
25 no, I'm not saying that. What he's saying is, man, I have

1 got to hang on to that commission because that's how this
2 thing hums, because these people are hungry and I want them
3 hungry because I want them selling.

4 Another waste of time, another sideshow: Whether
5 plaintiffs liked their job there or not. So what? Whether
6 they are good at it or not. Who cares? It has nothing to
7 do with whether their primary duty was sales whether they
8 were good at their primary duties or not. It doesn't
9 matter.

10 What we are here talking about is whether they should
11 have been paid overtime based on their hours and their
12 primary duty. Whether they liked it, who cares? Whether
13 they were good at it, who cares? How they left, if they
14 left on good terms or bad terms, who cares? All of those
15 things, none of that stuff matters, but, boy, we spent a lot
16 of time on it.

17 I'm sure we will hear a bunch about it today. He will
18 attack these 25 people today, and listen carefully for job
19 duties and hours worked.

20 **THE COURT:** You are at about two hours and ten
21 minutes, Mr. Lukas, for your information.

22 **MR. LUKAS:** I was going to go over the special
23 verdict form and end.

24 **THE COURT:** Okay. You do whatever you want. I
25 wanted to let you know how long --

1 **MR. LUKAS:** Yeah, I want to show these people
2 where to check the boxes.

3 I'm going to show you something called the verdict
4 form. It's a three-page document that you are going to get
5 that goes back with you. This is your verdict. This is
6 what you fill out to tell the Court and us what you want to
7 do. Okay?

8 The first question -- as soon as Don gets this up and
9 running, I'll put it up here for you.

10 I'll foreshadow it a little bit for you. The first
11 question is the administrative exemption, did they satisfy
12 it or not. There's two questions there, the two I showed
13 you up on the screen. The answer is no and no.

14 There we go. Verdict Form, administrative exemption.

15 This is the law I showed you on the screen. This is
16 that general law. In order for Quicken to win, yes has to
17 be checked in both of these questions, and then you're done,
18 sign it, because we lose, the plaintiffs lose.

19 But that's not what we are asking you to do. We are
20 asking you to say:

21 Was plaintiffs' primary job duty the
22 performance of office or non-manual work
23 directly related to the management or general
24 business operations of Quicken Loans or its
25 customers?

1 No. Why? Because their primary duties is sales.

2 Number two:

3 Did the plaintiffs' primary job duty include
4 the exercise of discretion and independent
5 judgment with respect to matters of
6 significance?

7 No. Why? Because their primary duty was sales, and as I
8 showed you when I danced through the law, we could put a
9 couple more checks in the no boxes if you wanted.

10 We could say they weren't servicing the business, they
11 were in production work. They weren't servicing the
12 business. They weren't doing any of those list of jobs the
13 Court is going to tell you about, so let's put another no.

14 Discretion and judgment. They weren't exercising the
15 kind of discretion and judgment the law calls for, not being
16 subject to immediate review, not being subject to the
17 guidelines and manuals. So we could put two checks there,
18 too.

19 And when you check no -- obviously you only have to put
20 one check, okay?

21 You hit no, then you hit no, and then you go to
22 question two, which is hours worked and weeks employed --
23 hours worked. I'm sorry, hours worked by plaintiffs. Then
24 you do that.

25 And I want to make sure I have the right exhibit.

1 D202, right? Or 201. Thank you, Robert.

2 D201. And what you do is you look at D201 in that
3 column, and that will tell you what our clients testified
4 to. I'm not going to tell you write that number because
5 this is your job. You guys decide what a just and
6 reasonable inference is. Because there's no time records,
7 you have to say what you think is fair, and you put in what
8 you think is fair.

9 I give you D201, that column, only because in case your
10 notes aren't complete as to -- remember, Zane Kadro is 70
11 and Kelly Lacey is 60. Other than that, D201 should give
12 you that in case your notes or your brain doesn't have that
13 in there. Okay? And there's a box for each of the 25
14 testifying plaintiffs.

15 And then you go to Question 3:

16 Please determine the average number of
17 overtime hours worked, per week, by the
18 non-testifying plaintiffs while they were
19 employed at Quicken Loans.

20 If you decide that you cannot draw any
21 conclusions about the hours the
22 non-testifying plaintiffs worked based on the
23 testimony of plaintiffs who appeared in court
24 and the other proofs -- that's all of the
25 other evidence you saw -- you may mark "0" in

1 the space below.

2 But what we are suggesting is that you put in a number here
3 because we believe you have seen more than enough to fairly
4 represent what the non-testifying plaintiffs should get.

5 You should give them a number that represents something
6 close to what the testifying plaintiffs did. You saw that
7 when we did the high/low range it was between 62 and 64.5.

8 We suggest you do something, whatever you do with the
9 testifying plaintiffs, we suggest you do something very
10 close to that with the non-testifying plaintiffs, but again,
11 your job, your decision.

12 And then whoever who is chosen as the foreperson should
13 sign and date it. So, to review, no, no, fair hours, just
14 and reasonable hours based on what you guys think is fair,
15 same thing for non-testifying.

16 And I'm sorry I went so long, but, again, thank you so
17 much. I know it's been a long case, it's been a long trial,
18 and you guys have been really fantastic.

19 **THE COURT:** Okay. Thank you very much, Mr. Lukas.

20 Ladies and gentlemen, we will take a brief recess.

21 Let's try to make it 25 minutes, which should give you
22 enough time to get a bite to eat and come back, bearing in
23 mind that you need to keep an open mind. We are going to
24 keep the case going, and Mr. Morganroth will have his
25 opportunity to address you this afternoon.

1 And keep in mind, as well, that the evidence is in.
2 These are arguments, which are not evidence, and intended to
3 give you the litigants' views of what the evidence is.
4 All right?

5 Enjoy your break. We'll take 25 minutes, and refresh
6 yourself. We'll try to get back in here at 1:00 to hear
7 Mr. Morganroth, all right? Let's all rise for our jury.

8 (Jury out at 12:37 p.m.)

9 **THE COURT:** Okay. You may all be seated.

10 The only issue that I didn't take up with the lawyers
11 that I want to make sure we are clear about is -- Carol, I
12 hope, sent you an email last week. My senior clerk and I
13 went through all of the documentary evidence. We have
14 compared and contrasted what we have, what I took notes on
15 with your proposed exhibit lists. We found everything
16 largely accurate. There were a couple of issues of items
17 that were missing. My hope is that you supply what's
18 missing. I left what had been offered and not used on your
19 tables so my further hope is that you took those with you
20 and that you conferred and that everything we have in front
21 of us is accurate and ready for the jury's review should
22 they ask for it. All right?

23 Mr. Morganroth, are you okay on that?

24 **MR. JEFFREY MORGANROTH:** Yes, I am.

25 **THE COURT:** All right. Mr. Lukas?

1 **MR. LUKAS:** Yep, I think we are set, Judge.

2 **THE COURT:** Okay, excellent. Then the exhibits
3 are all taken care of.

4 We'll take a luncheon recess for about 25 minutes, and
5 we'll be back at 1:00. Thank you all very much. We are in
6 recess now.

7 (Lunch recess from 12:38 p.m. to 1:16 p.m.)

8 **THE COURT:** Okay. You may all be seated.

9 I apologize for the brief delay. The jurors insisted
10 on five or ten more minutes so they could finish their
11 lunch, and who am I to say no?

12 All right. Mr. Morganroth, we are ready for you, and I
13 see our friend Mr. Hirsch is here, so welcome back,
14 Mr. Hirsch.

15 So let's get going, Carol.

16 (Jury in at 1:17 p.m.)

17 **THE COURT:** Okay. Let's all rise for our jury.

18 Come on back, folks.

19 Okay. All of our jurors are back and they are in their
20 places so you may all be seated now.

21 Carol said if you didn't get an additional ten minutes
22 to eat your lunch you were going to go on strike, right?
23 Okay. Well, your tactics worked this time. All right.

24 Okay. Ladies and gentlemen, as I mentioned before we
25 broke, Mr. Morganroth is going to present his closing

1 argument, and as I admonished you when Mr. Lukas finished
2 his, the arguments are just that, they are not evidence, but
3 nonetheless I ask that you give rapt attention.

4 Mr. Morganroth will go for about two, two and-a-half
5 hours. We will take another short break, just a bathroom
6 break and a drink of water, then we'll come back for a very
7 brief rebuttal from Mr. Lukas, then we will launch right
8 into the instructions and then the case will be yours.

9 Okay?

10 All right. Give attention, and Mr. Morganroth, it is
11 your turn now.

12 **MR. JEFFREY MORGANROTH:** Thank you, Your Honor.

13 Good afternoon, everyone.

14 **THE JURORS:** Good afternoon.

15 **MR. JEFFREY MORGANROTH:** We started this trial
16 five weeks ago, about four weeks of testimony. At the
17 beginning of the trial the lawyers had an opportunity to
18 directly address the jury, and that was called the opening
19 statement, to give you a road map to indicate where we
20 thought we would be going, what the evidence would prove,
21 and a good word for the opening statement is foreshadowing
22 or to foreshadow. We learned a lot about that term, much
23 more about it, during this trial.

24 This is now the closing argument and the closing
25 argument is when the lawyers directly discuss the evidence,

1 the testimony, and what we believe we proved during the
2 case. And the Court will instruct you, as Judge Murphy has
3 just done, that what the lawyers say during the closing
4 argument is not proof, that's not evidence, and that goes
5 for Mr. Lukas' closing argument as well. It's simply to
6 deliver our position as to what we think the testimony and
7 the exhibits show and in order to try to convince you of
8 what we think we have proved in the case.

9 Now, both sides get to ask you, the jury, to rule for
10 their side at this stage of the case, and it's much like
11 asking for the business or asking for a commitment to go
12 forward with the loan. Lawyers on both sides have the job
13 duty of trying to prove their case and trying to convince
14 you to rule for their client.

15 Now, if I do a good job in this case and we win it, my
16 law firm might get more business from Quicken Loans or we
17 may get referrals from Quicken Loans or at least I hope so,
18 but does that mean that my job is a sales job?

19 Now, I have no problem if someone calls me a salesman
20 or if they refer to lawyers as salespeople. There are
21 courses and books written on how lawyers can attract
22 business. Lawyers can advertise. We get referrals. We get
23 repeat clients. When we accept a case, we typically get a
24 retainer, much like the deposit that the loan officers would
25 get or mortgage bankers.

1 The lawyers who are good at getting business are called
2 rainmakers. They are actually compensated more because they
3 have the ability to attract business, and most lawyers'
4 compensation is also based upon the business that they bring
5 in.

6 There are courses and books written on how to
7 communicate and sell your client's position in settlement
8 negotiation. There are courses and books that are written
9 on how to communicate and sell your client's position in
10 motion hearings. There are courses and books written on how
11 to present and communicate at a trial and to help convince
12 and sell the jury.

13 Sometimes lawyers are referred as to selling legal
14 services. Do I care if someone calls me a salesperson or if
15 the legal profession uses these types of sales terminology
16 or lingo? Absolutely not. But to turn around and try to
17 take advantage of this type of generic lingo in an effort to
18 get overtime, that would be inappropriate and unfair, and
19 that's what's happening in this case. That's precisely what
20 the plaintiffs are trying to do here.

21 Every single job has a sales component. I can't think
22 of a single one that doesn't.

23 Members of the clergy, like a priest or a rabbi or a
24 minister, they attempt to get members to join their
25 congregation. They attempt to convince or sell religious

1 philosophies during sermons.

2 Politicians are constantly selling or trying to
3 persuade others about his or her political views, first in
4 order to get elected and then later in order to try to get
5 measures passed or bills passed.

6 But does this mean that members of the clergy,
7 politicians, lawyers are salespeople in the truest sense, in
8 the literal sense of the word?

9 Now, here is a little bit of foreshadowing for this
10 closing argument. I'll be focusing on key testimony and
11 exhibits from the trial which you can specifically consider
12 in making your decision in this case, and before I get into
13 the specific testimony and exhibits I first want to
14 thank you, the jury, again for your time and attention in
15 this case.

16 The jury system is extremely important. It's what sets
17 our judicial system apart from those of many other
18 countries. So I thank you for your service, your attention,
19 and certainly for your time. We don't take lightly the
20 sacrifices and commitment that you have made for this trial,
21 and it's been a time-consuming trial. It has been a lot of
22 work for everyone, including the lawyers.

23 For me, all of the hard work, the long hours, not
24 seeing my family, disruption to my regular routine, lack of
25 sleep, it was all worth it for two reasons.

1 First, well, I got another chance to work with my
2 father, and we have been working together for a lot of years
3 on many different trials over the years, but we both know
4 that we will not be able to work on trials forever so each
5 time we get a chance to work together on a trial it's
6 special for us. So that's the first reason.

7 The second reason, and the most important reason, is
8 who we represent in this case. Out of all of our years as
9 lawyers, both my father and I -- and that's a lot of
10 collective years when you take into consideration how long
11 he has been practicing -- we have never ever come across a
12 company like Quicken Loans. Quicken Loans is a special,
13 one-of-a-kind company, as the evidence in this case has
14 shown. It is exceptional. It's made up of fine people that
15 are hard working, dedicated, and they strive to do the right
16 thing. Do the right thing for their clients, do the right
17 thing for the company, do the right thing for the employees.

18 Now, how many companies have you heard of that put
19 together a compensation package that would pay more money,
20 to the tune of three, four, five, six times more?

21 How many companies have you heard of that send
22 thank you emails company wide and recognize the
23 contributions to the success of the company sent by the
24 chairman and majority owner like Dan Gilbert or sent by the
25 CEO like Bill Emerson?

1 How many companies have you heard of that provide a
2 tremendous amount of paid days off right from the beginning
3 of the employment? And this is for new employees.

4 Now, Sarah Little, she is one of the plaintiffs in this
5 case. We'll put up some pictures here to try to refresh and
6 remind who these plaintiffs were. So the first one I have
7 up here is Sarah Little, and these pictures are back from
8 the time period that they were actually employed by
9 Quicken Loans. So she still looks pretty much like that,
10 but it's been a number of years.

11 So, Ms. Little, she was paid for 17 workdays that she
12 missed plus legal holidays that she missed during a
13 five-month span of employment. Right from the beginning.

14 Tamara Cooke. You probably remember Ms. Cooke. She
15 testified, another plaintiff. Let's put her up here.

16 And, Ms. Cooke, she was paid for 24 work days plus
17 legal holidays that she missed, she didn't work. She was
18 paid for all of that time in a one-year time span that she
19 was employed.

20 Lindsay Tittensor, the very first witness in this case.
21 I will put up a picture of Ms. Tittensor.

22 Ms. Tittensor was paid for 18 workdays that she missed,
23 plus legal holidays that she missed during an 11-month span
24 of employment. She worked a mere 11 months as a mortgage
25 banker at Quicken Loans, and she missed 18 days and got paid

1 for it plus legal holidays.

2 Now, how many companies have you heard of that have
3 ping pong tables, foosball tables, arcade games, karaoke,
4 Nerf football games, dress-up contests, chicken nugget
5 eating contests, birthday celebrations, decorations in the
6 office, all of these things in the middle of the offices
7 where they know that the employees will take advantage of
8 that, participate during work hours and not work?

9 How many companies do you know or have you heard of
10 that allow the employees to have personal calls during work
11 hours when the company knows the extent, length and nature
12 of the personal calls like Quicken Loans? They had a
13 telecommunications system that tracked all of the personal
14 calls, measured the time and numbers and who they were
15 calling.

16 We heard from Kelly -- Lytle was her maiden name. That
17 was her name when she was employed. Now she married
18 Mr. Lacey, who was in the courtroom. He was also a Quicken
19 Loans' employee, a mortgage banker. He worked there for
20 seven years.

21 Here is Ms. Lacey. Ms. Lacey, she testified and
22 admitted that she had 943 calls to her then boyfriend
23 Alan Lacey that she made externally when he wasn't on the
24 premises and another 378 internal calls to Mr. Lacey while
25 he was also serving as a mortgage banker and he was on the

1 premises. That's a total of 1,321 calls just to her
2 boyfriend alone. And there were other personal calls as
3 well.

4 Now, was she disciplined for this? No. Quicken Loans
5 knew that she was making these calls and it was okay, but is
6 it okay for her to receive overtime when she's talking 1,321
7 times with her boyfriend or all of these other personal
8 calls?

9 So just to remind us of Ms. Lacy and all of her
10 personal calls, I am going to put up here personal calls,
11 just to refresh us.

12 Now, Nicole Lilly, that's another plaintiff. Ms. Lilly
13 was I believe the third witness who testified. We'll put
14 her up.

15 Ms. Lilly acknowledged that she had 722 calls to her
16 fiance at the time, 100 calls to her sister, another 308
17 calls to another number, 103 calls to her son's nursery.
18 Ms. Lilly was the individual who testified that she leashed
19 her son to the desk. She had other personal calls as well,
20 and she didn't even work one full year at Quicken Loans. Is
21 it fair for her to get overtime when she has all of these
22 personal calls on the time that she spent?

23 Let's put up here personal calls for Ms. Lilly as well.

24 Now, how many companies have you heard of that allow
25 their employees to surf the internet for personal purposes

1 on a regular basis during work hours and know about it
2 because of their systems?

3 Now, Mona Vats, if you recall, she testified as a
4 plaintiff. She drove in from Cleveland, Ohio. Let's put up
5 a picture of Ms. Vats.

6 Ms. Vats testified that she regularly during the
7 four months of employment surfed the internet, she said
8 everyone did, for personal purposes. So let's put up what
9 she was regularly doing while she was employed at
10 Quicken Loans, surfed the net. And is it fair to award her
11 overtime on time when she was surfing the net for her own
12 personal purposes?

13 Jennifer Maull. Jennifer Maull was the individual who
14 came in here and testified that she had been fired because
15 she called a client a swear word. She called a client a
16 bitch, and then what did she do? She lied about it and she
17 got fired, and during her testimony she admitted that that
18 was the right call to fire me, it was appropriate to fire me
19 and I should have been fired.

20 Well, she readily admitted during her testimony that
21 she was shopping on line during work hours. So let's put up
22 a picture of Ms. Maull, who was shopping on line while she
23 was working, and certainly -- surf net. Certainly that
24 wouldn't be working, while you are shopping on line.

25 Lola Herman. Lola Herman testified, and she didn't

1 deny that she shopped on line during work hours. She
2 readily admitted that she was doing her personal banking on
3 line during work hours from Quicken Loans.

4 So we'll put her up, and this picture is not quite as
5 clear, but it does look like Ms. Herman. Surf net. The net
6 surfing she was doing was not shopping, but she was doing
7 her personal banking while at work.

8 Now, how many companies do you know or have you heard
9 of that promote from within to the highest levels on a
10 consistent and a regular basis for all employees?

11 Now, we heard about Jeff Perry. Jeff Perry was a copy
12 guy. He rose up and was promoted during a four-month period
13 to become a site leader and a regional vice president of the
14 Cleveland web center.

15 We heard about Jay Farner as another example. He
16 started off as a mortgage banker, and Mr. Farner then became
17 the head of the entire web center. Now he's the chief
18 marketing officer.

19 And one last example is Mr. Emerson. Mr. Emerson, he
20 testified that he started as a mortgage banker, and nine
21 year to the day he became the CEO of the company.

22 Now, Quicken Loans is a young, fun and energetic place
23 to work, with its headquarters right here in the City of
24 Detroit, and you heard Mr. Gilbert testify that he was
25 committed to the City of Detroit to create jobs.

1 Quicken Loans would do so on its own and in conjunction with
2 community efforts, such as Bisdome U.

3 Quicken Loans has consistently been recognized as one
4 of the best places to work in the entire country. During
5 the time frame that we have at issue in this case
6 Quicken Loans was ranked within the top 15 companies to work
7 in the entire United States, and its employees, including
8 the mortgage bankers, they filled out anonymous surveys as
9 part of the ranking process.

10 And Quicken Loans also consistently has been recognized
11 as one of the top companies in terms of customer service.
12 It's been ranked number one by J.D. Powers.

13 Quicken Loans has created a unique and revolutionary
14 way to consult and advise clients regarding mortgages and to
15 find them solutions. We heard about Mortgage in a Box, the
16 online web center, and that Quicken Loans has become the
17 number one online residential mortgage company in this
18 country.

19 Its chairman, Mr. Gilbert, sends out emails that
20 motivate, inspire, provoke thought, and have a sense of
21 humor. We saw the April Fool's stunt email.

22 And there are references to movies in his emails. He
23 drew upon, "Any Given Sunday", "A Few Good Men", "2001 Space
24 Odyssey."

25 There were references to songs. One of the emails that

1 Mr. Lukas took out of context this morning was Eminem's, the
2 song, "The Moment," which Mr. Gilbert was playing off of.

3 Quicken has even developed "ism's". We have heard
4 about the ism's. These are the corporate mottos.

5 "Every client, every time, no exceptions."

6 "Eat our own dog food."

7 "What you focus on you find." That's Mr. Emerson's,
8 one of his favorites.

9 "Do the right thing."

10 Dan Gilbert summed up all of this in his 2002 email, if
11 we can put that up on the screen there. I would like to go
12 to the third-to-the-last paragraph. It starts with, "I
13 almost had to pinch myself this morning." Do you see that?

14 Right in here it starts, right over here, "My mission
15 is clear." This is what Mr. Gilbert summed up.

16 My mission is clear: Keep this place the
17 absolute best in the world to work, create an
18 environment where you can express your talent
19 and potential.

20 And that's what Quicken Loans is about, and it's been an
21 honor and a privilege to represent that kind of company in
22 this case.

23 So what is this case really about? The plaintiffs are
24 trying to suggest that they were somehow cheated out of
25 overtime. Now, that's far from the truth. It's actually

1 quite the opposite.

2 We have heard testimony that Quicken Loans put together
3 a compensation package that was actually better for the
4 mortgage bankers, not worse. Jay Farner first testified
5 about that, then Dan Gilbert testified about it,
6 Bill Emerson testified about it, and they explained this
7 during their testimony. They testified that they did not
8 pay overtime to mortgage bankers because they didn't qualify
9 for it, but they would put together a package, a
10 compensation package that was actually better for them.

11 And Quicken Loans does pay overtime to employees that
12 qualify, and one example that was given in this case was the
13 frontline agent. Now, remember, the frontline agent is a
14 separate job position. The front line would prospect, and
15 they would prescreen prospects to determine if they were
16 interested in pursuing a mortgage with Quicken Loans, and if
17 they did, what the frontline agent would do is transfer that
18 caller to a mortgage banker to consult, advise, recommend,
19 educate, and provide the financial services in connection
20 with mortgages.

21 Now, frontline agents, it was testified to, received
22 overtime, and we heard from at least two, two mortgage
23 bankers that are plaintiffs that also had served as
24 frontline agents at some point in their employment. That's
25 Nicole Abate and Neil Childs, and both of them admitted that

1 they were paid overtime during that time period. But that's
2 a different job than what a mortgage banker does.

3 There were a number of witnesses who testified in terms
4 of the compensation package. You heard about Colleen Booza.
5 She is sitting here today in the courtroom.

6 And Matthew Thompson, who testified. He's here, too.

7 Brian Baumann, he testified. He's here.

8 Thomas Ortman, who is not an employee of Quicken Loans
9 any longer and has not been for a number of years, he is not
10 here today. He appeared to testify pursuant to a subpoena.
11 You heard from him.

12 Victor You, he's here today.

13 John Bettis, you heard from him. Again, another former
14 employee that is not employed by Quicken Loans at this time
15 and who appeared at the trial to testify pursuant to a
16 subpoena. He's not here today.

17 Now, what each one of these individuals testified to is
18 that they prefer the compensation package that they
19 received. It was better.

20 Now, we could have called many more mortgage bankers to
21 testify at the trial, and we could have called many more
22 former mortgage bankers to confirm the testimony of these
23 six witnesses. We didn't do so because we felt that you had
24 heard enough, and we felt that you had enough information
25 and evidence to see what was really going on.

1 The mortgage bankers at Quicken Loans had an
2 opportunity to earn between 100 to 200 thousand dollars as a
3 young person right out of school.

4 Now, let's talk about Victor You for a minute. Mr. You
5 testified that he worked about 50 hours a week as a mortgage
6 banker, and he earned \$143,000 in 2003.

7 Now, Mr. Nichols asked Ms. Booth when she was on the
8 stand -- Julie Booth, and I believe she is here, too -- he
9 asked her to compare the compensation without overtime that
10 was received, guaranteed salary plus commissions, versus a
11 compensation package with overtime and salary. And he used
12 the wrong rate, a higher rate. He used 60 hours a week for
13 work, and he assumed in that that there were no breaks.
14 They worked 52 weeks, no breaks at all, no time off, and
15 spent every minute on the job working for those 60 hours.

16 And Ms. Booth answered his questions, and then I asked
17 Ms. Booth about that. And I used Mr. Victor You to
18 highlight what would happen to compare the two packages.
19 And we used 60 hours a week even though Mr. You only worked
20 50 hours a week, and we used the wrong, the higher rate.
21 And we assumed that he worked every minute of the day, no
22 time off, 52 weeks a year, and we knew that wasn't right
23 because Mr. You testified he took breaks for lunches, at
24 least an hour and-a-half to two hours a day.

25 And how did that come out? Well, it came out,

1 Ms. Booth did her calculations while she was on the stand,
2 and it was \$49,000 he would have received if he would have
3 gotten paid a salary plus overtime versus \$143,000 that he
4 was really paid based on the guaranteed salary and
5 commissions. That's almost three times more based on the
6 compensation package that Quicken Loans paid him.

7 Now, I would like to put up on the board and look at a
8 few other of the plaintiffs and witnesses who testified.
9 Colleen Booza is not a plaintiff. I'm going to slide over
10 here, and we'll go through this.

11 Ms. Booza testified that she earned \$106,000 in 2006.
12 She was a mortgage banker, and her guaranteed salary was
13 \$29,000 a year that year and her commissions were 77,000.
14 That's what she testified to, a total of \$106,000.

15 Now, if she was paid overtime instead of a commission
16 and she received hourly or guaranteed salary plus overtime
17 and using 60 hours a week -- now, she testified during this
18 time period she only worked 50 or 55 hours a week, but if
19 you used 60 hours a week -- this is what she would have
20 received in overtime, \$4,833. So \$4,833 plus 29,000.

21 We'll say she got a guaranteed salary, and we'll say
22 she worked every minute of every day, took no time off.
23 Again, we know that's not right because Ms. Booza testified
24 that she did take time off. She worked zero hours some
25 weeks. She went of vacation. She took breaks. She

1 participated in fun, playtime activities at Quicken Loans.
2 She had personal calls, surfed the net. She came in late
3 sometimes, she admitted, and left early.

4 But, assuming that she didn't do any of that, she
5 worked around the clock, she would have earned \$33,833.
6 That's what she would have made in 2006. But what was she
7 paid? \$106,000. \$106,000 in a guaranteed salary and
8 commissions.

9 Now, Ms. Booza is not a plaintiff here, and she said
10 she didn't feel it was right. She didn't feel that she
11 would deserve any more compensation. She testified that she
12 didn't feel that she was entitled to any more compensation.
13 She wanted the compensation that she was given.

14 But if she was a plaintiff in this case, well, the
15 plaintiffs are asking for overtime on top of their salary
16 and their commission. So if you calculate that using the
17 right rate, this is what she would be seeking in this case,
18 \$17,667.

19 And if you add that to what she was paid, which is
20 exactly what the plaintiffs want to do, they want to add
21 that to what they were paid, she would be seeking to be paid
22 \$123,667 in this lawsuit when in fact this is the number
23 that she would have been paid if she was paid overtime to
24 begin with, 33,833. That's the difference.

25 And the plaintiffs aren't coming in here saying, you

1 know what, let me give you back my commission, let me give
2 you back my guaranteed salary, and recalculate it for us on
3 overtime and a salary. They are not doing that because this
4 is what they would get if they did that. But, no, they are
5 asking for this: overtime on top of their guaranteed salary
6 and commission, which was something that -- instead of
7 overtime.

8 Now, let's go through another example. Brian Baumann.
9 We heard from Mr. Baumann. Mr. Baumann testified that he
10 worked 50 hours a week, and when he said 50 hours a week, he
11 was talking about the hours that he was at the offices of
12 Quicken Loans.

13 Now, we heard from Mr. Baumann who testified that he
14 didn't work every minute he was at the office. He
15 participated in the fun activities. He had personal calls.
16 He surfed the net. He indicated that he would go on breaks
17 and take walks. He also indicated he would leave the
18 offices during work hours for two different reasons he gave
19 you as examples. One was he had a special needs brother
20 that he would leave and take care of, and the second one was
21 to play racketball.

22 But let's say Mr. Baumann worked 50 hours every week,
23 never took a vacation, never took a break. In 2006
24 Mr. Baumann, he was paid \$190,000, and his guaranteed salary
25 30,000 that year so he made \$160,000 in commissions, he

1 testified. And if he was paid, instead of the commissions,
2 he was paid overtime and either a guaranteed salary or
3 hourly salary, he would have made \$3,000 in overtime.
4 That's based on 50 hours a week for 52 weeks with no breaks,
5 no time off.

6 Here is what he would have earned, \$33,000. Here is
7 what he was paid, \$190,000. About six times more for his
8 compensation package in terms of what he was actually paid
9 and what he would have been paid if he was paid overtime.

10 And, again, it doesn't stop here. Based on plaintiffs'
11 demand for overtime in this case, if Mr. Baumann was a
12 plaintiff, which he is not, if he was, this is what he would
13 be asking for, \$19,000 more on top of his guaranteed salary
14 and commission. That means he would have been asking for
15 \$209,000 to be paid for 2006 when this is what he would have
16 been paid if he was paid overtime to begin with, \$33,000.

17 Look at this difference. That's what this case is
18 about.

19 Let's go on to John Bettis. Mr. Bettis is a former
20 employee. He testified he didn't want to join this lawsuit.
21 He didn't feel he was entitled to any more compensation. He
22 didn't feel that he deserved any more compensation.
23 Quicken Loans was up front with the way he was to be paid.
24 He wanted to be paid that way, he testified.

25 And Mr. Bettis came in. He testified pursuant to a

1 subpoena. You will recall Mr. Bettis, his brother is
2 Jerome Bettis, the former football player for the Pittsburgh
3 Steelers.

4 Mr. Bettis, in 2005 he testified he earned \$80,000.
5 His guaranteed salary was \$28,000, his commissions were
6 52,000, but if he was paid overtime based on his testimony
7 of working around 55 to 60 hours a week and if he worked
8 every week that amount for 52 weeks with no breaks, this is
9 what he would have received in overtime, \$3,818 using the
10 correct rate.

11 Now, we know that Mr. Bettis took time off, he
12 testified to it, and we also know that Mr. Bettis had
13 personal calls and he testified that he participated in the
14 fun, play activities. He won the stare-down contest, and he
15 said he liked to talk, he would go long on phone calls.

16 But Mr. Bettis would have earned \$31,818 if he had been
17 paid overtime. Instead, he got paid \$80,000. And if he was
18 a plaintiff here, which he says he wouldn't be, this is what
19 he would be asking for in this case. Another \$10,909. And
20 Mr. Bettis said he didn't feel he deserved any more
21 compensation, but this is what he would be seeking in this
22 case, \$90,909 for the year 2005, when this is what he would
23 have been paid if he was paid overtime and a salary to begin
24 with, \$31,818. That's what this case is about.

25 Let's look at one last example, and that's a plaintiff

1 in the case. The very last plaintiff to testify was
2 Kelly -- Lytle is her maiden name -- Lacey. And what she
3 testified is that she was paid \$87,500 in the year 2002.
4 Her guaranteed salary was around \$26,500, and her
5 commissions were 61,000, she testified. And here is what
6 she would earn using 60 hours a week, no breaks, no time
7 off, 52 weeks a year, every minute of every day working at
8 Quicken Loans on premises.

9 Now, we know that assumption is not right. Kelly Lytle
10 Lacey had all of those phone calls, 1,321 to her boyfriend
11 at the time. She also went on three trips which
12 Quicken Loans paid for. She went on a cruise to the
13 Bahamas, they sent her to South Beach, Florida, and sent her
14 to Las Vegas.

15 But she testified she wanted overtime on her personal
16 calls. She wanted overtime when she was sent away, and it
17 was paid for, on these vacations.

18 Let's assume that's what she would get overtime on.
19 That's \$4,417. So here is what she would have earned if she
20 was paid overtime and salary, \$30,917. And here is what she
21 was paid, 87,500.

22 And what is she asking for in this case on top of her
23 salary and commissions? She is asking for 14,583 more
24 dollars, which means for Kelly Lytle Lacey in 2002 she wants
25 to be paid \$102,083, and this is what she would have been

1 paid had she been paid overtime with a salary, \$30,917.

2 That's what this case is about.

3 She also testified to similar numbers for the year
4 2003. It was 87,000 -- let's see what the number was for
5 2003. For 2003 it was 87,431, so a very similar breakdown
6 as this 2002 time period and very similar in terms of -- you
7 can just flash it up real quickly -- in terms of all of the
8 differences. \$102,183 is what she would be asking to be
9 paid in 2003 versus 32,667 she would have been paid had she
10 been paid overtime with a salary.

11 So is what the plaintiffs are seeking in this case
12 fair? Is it just? Is it warranted in any respect?

13 Plaintiffs want overtime to be paid on top of their
14 guaranteed salary and commission. They want overtime to be
15 paid to them on top of the commissions. They want overtime
16 to be paid on top of their salary, everything. This would
17 result in this unfair, this unfair windfall, the difference
18 between -- here is the line right here, and we have seen it
19 for Ms. Lacey.

20 Now, let's take for a moment into consideration what
21 Ms. Lilly testified to. Ms. Lilly was up here and she
22 recognized this unfair result, and I asked her are you
23 seeking overtime on your commissions? And she indicated
24 under oath on cross-examination no. She acknowledged that
25 she should not be entitled to overtime on top of

1 commissions, but even though she acknowledged that under
2 oath, if you find in favor of Ms. Lilly and the other
3 plaintiffs, they will receive overtime on top of their
4 guaranteed salary and their commissions. Are you going to
5 give Ms. Lilly overtime on top of her commission even though
6 she admitted under oath she shouldn't receive it?

7 The testimony is clear that the compensation package
8 was structured as salary and overtime, guaranteed salary and
9 overtime, and the plaintiffs would not have received those
10 commissions had they been paid overtime. Mr. Gilbert made
11 that crystal clear.

12 It wouldn't make any sense and they never would have
13 constructed a compensation package that way to include, as
14 Mr. Lukas is suggesting, commissions and a guaranteed salary
15 and then overtime on top of both of those. I have never
16 heard of a job like that, and certainly Quicken Loans would
17 not have paid that. They are already paying two, three,
18 four, five, six times more than what a compensation package
19 would entitle a mortgage banker to in terms of hourly salary
20 plus overtime, and now you are going to put overtime on top
21 of commissions? No.

22 And Mr. Farner testified to this structure as well and
23 Mr. Emerson testified to that, and the bankers knew it. The
24 mortgage bankers knew it. That's why Victor You came in
25 here and testified, Brian Baumann, Colleen Booza and others,

1 that they wanted to be paid guaranteed salary and
2 commissions. In fact, Mr. You testified that that's one of
3 the reason why he accepted the job: He wanted those
4 commissions.

5 Are you going to give the plaintiffs overtime on top of
6 their guaranteed salary and commissions when they never
7 would have received the commissions in the first place?

8 Plaintiffs now want overtime to be paid to them for the
9 time periods they took time off, for their vacation time.

10 Are you going to give them overtime for that?

11 Plaintiffs want overtime to be paid for the time
12 periods when they weren't even working, when they were
13 taking breaks, when they were participating in the playtime,
14 fun time activities, their personal calls, surfing the
15 internet, when they were socializing at Quicken Loans
16 offices. Quicken Loans understood they were doing that. It
17 was fine.

18 They could go take smoke breaks and leave the building
19 and go outside and socialize and come back up. They could
20 have personal calls. They could enjoy themselves, playing
21 Nerf football in the middle of the office or singing
22 karaoke. They could partake in chicken nugget eating
23 contests. They could surf the internet or shop on line.
24 They could do personal banking. Are you going to entitle
25 them to overtime for that though?

1 Now, Chanda Whitted, let me put her picture up. She
2 was the second witness that testified on behalf of the
3 plaintiffs. Ms. Whitted, she ultimately admitted on
4 cross-examination that she had a side business going,
5 embroidery/silkscreen business, and she admitted that she
6 was partners with her husband and that she may have worked
7 on the side business while she was at Quicken Loans during
8 work hours. Is Chanda Whitted entitled to overtime when she
9 was working on a side business? Are you going to give her
10 overtime for that?

11 Plaintiffs entered into evidence P102. Maybe you can
12 flash this on the board here. They put it into evidence as
13 the supposed weeks that the plaintiffs worked, and they
14 brought in from Minnesota someone from their firm who called
15 himself a litigation data specialist, something like that,
16 to testify about this summary exhibit.

17 And we questioned him about this exhibit because this
18 exhibit included weeks where some of the plaintiffs were not
19 even working as mortgage bankers at Quicken Loans. That's
20 Nicole Abate and Neil Childs. They were frontline agents
21 during the time period they were put up here, at least some
22 of the time period.

23 The exhibit included weeks where some of the plaintiffs
24 were on leave.

25 And I'll put up Nicole Abate and Mr. Childs so you can

1 refresh what they looked like here.

2 Chanda Whitted was on leave for an extended period of
3 time and Ms. Lilly was on leave, but they didn't take that
4 out of here, they included that, and the exhibit was riddled
5 with flaws and inaccuracies. It didn't even take into
6 consideration the testimony of the plaintiffs, and they
7 didn't even bother to talk to the plaintiffs about what
8 period of time they actually were working and suggesting or
9 claiming that they had been working overtime.

10 So we then put in Exhibit D202, and Exhibit D202 was
11 for the purpose of putting in the actual weeks they were
12 employed. And it was broken down into various columns.
13 One of them is full weeks, and that's the weeks that they
14 were employed where they were there full time, you know, a
15 full week. And then there was weeks in training, and those
16 were weeks that most of the plaintiffs admitted they
17 couldn't possibly have been working overtime. And then the
18 last column is partial weeks, and that's where they worked
19 less than three days during the week and they couldn't
20 possibly receive overtime either.

21 And Mr. Nichols gave Ms. Booth a hard time about this
22 exhibit, that it's flawed and that she made mistakes or that
23 it wasn't based on what documents had been introduced. But,
24 lo and behold, Mr. Lukas comes in here today and he admits
25 that this exhibit is accurate and they are stipulating to

1 this exhibit. This is the exhibit that they gave us such a
2 hard time about and challenged and attacked Ms. Booth on.

3 What's important in this exhibit is the full weeks
4 column. That's the maximum amount of weeks that any
5 plaintiff could have worked overtime, the full weeks, but
6 they didn't work overtime every week that they were
7 employed. They took time off, they took breaks.

8 You heard testimony there was fluctuating hours week to
9 week. Some weeks they may have worked 40 hours. Some weeks
10 they may have worked less.

11 Mr. Lukas referenced the Bari Beckett call clip today,
12 and I noticed that he only talked about a portion where she
13 said 60 to 80 hours, but there's another portion she said
14 she works 40 hours and no more than 40 hours and she works
15 from home. Somehow Mr. Lukas forgot to mention that.

16 Now, for some weeks, based on the start date and the
17 end date of their employment, they couldn't possibly have
18 worked overtime because they didn't work enough hours or
19 enough days.

20 Now, simply put, plaintiffs want overtime for
21 everything. They want overtime for the weeks where they did
22 not work more than 40 hours. They want overtime for the
23 time periods where they were not working. Are you going to
24 give it to them?

25 And the method of compensation was not only better for

1 the plaintiffs but was plainly and clearly disclosed right
2 from the beginning before they were even hired. We have
3 heard that from witness after witness. Every single
4 plaintiff admitted to that, that it was discussed with them
5 when they were hired and it was contained in employment
6 agreements.

7 Now, let's look at one of these just as an example.
8 Paragraph C8, and Paragraph C8 -- if you can put up this
9 board -- it's a compensation paragraph right from the
10 employment agreement, and it's a combination of their base
11 salary and incentive pay, which is the commission, pursuant
12 to the compensation plan.

13 And then we went through the compensation plan. Every
14 plaintiff got a compensation plan.

15 They signed their employment agreement. They signed
16 the compensation plan. That's the full measure of their
17 compensation, commissions plus guaranteed salary. They
18 understood that. Plus, they were to also get a full,
19 comprehensive benefits package that we heard about.

20 And each plaintiff testified that, and acknowledged,
21 that they knew how they were going to be compensated. They
22 knew right from the beginning. They understood it. In
23 fact, some of the mortgage bankers who testified indicated
24 that their HR representatives went through these documents
25 with them line by line.

1 Now, the commissions were based on five factors, and
2 it's not based on selling. And let's put up that board,
3 Number 6.

4 There's no commission that's paid when you get a
5 deposit. There's no commission that's paid when a loan is
6 originated. The commissions that come in is when the
7 mortgage banker performs the full balance of services, where
8 they manage the loan process from the very beginning all the
9 way through closing. They have to perform more than just
10 getting deposit or loan documentation back.

11 And what are the five factors? Well, one is their
12 designation in terms of what type of a consultant or loan
13 officer they were. Two, the number and type of loans closed
14 during the month because some loans took more effort, they
15 were more complicated, so they would receive a higher
16 commission rate for that. Premiums and concessions would
17 also be factored in. Client survey ratings, how they were
18 doing their job, that was factored in. Percentage of loans
19 in suspended, and we heard about that.

20 The suspended status is based upon a variety of things,
21 but one thing is, if you don't do the financial service, if
22 you don't do the advising, recommending, educating, if you
23 don't match up loan programs that meet the client's needs,
24 that they are qualified for, that's going to end up as a
25 suspended loan. So that's taken into account as well.

1 And Mr. Lukas indicated you have to originate six,
2 seven loans. Well, that's not the case. Each loan had
3 points that would be -- or units that would be allocated to
4 that particular loan for purposes of commissions, and I
5 think that from the testimony it sounded like maybe two or
6 three or four, depending on what type of loan is being
7 originated, that's what the threshold was. It's not six,
8 seven or eight, as Mr. Lukas was suggesting.

9 The plaintiffs who testified, they all acknowledged
10 that they knew, they understood they were salary, not
11 hourly. They knew and understood there would be no overtime
12 payment. They knew and understood that they might work
13 hours more than 40 hours per week.

14 The agreement clearly expressed that they were exempt
15 employees. That's in many different places. We'll go
16 through one example, which is the acknowledgment in Exhibit
17 D41, which is in evidence, if you can put that up. It says:

18 I (the undersigned web center loan
19 consultant) acknowledge receipt of the
20 Quicken Loans, Inc. web center loan
21 consultant compensation plan (November 2004
22 version). I understand and agree that this
23 plan sets forth the terms of my
24 responsibilities as an exempt employee.
25 Then it talks about compensation, commission, and this is

1 right above the signature block. It was specifically
2 discussed with them. It was completely up front. It was
3 agreed to. It was signed off.

4 No one is contending that the plaintiffs waived their
5 rights under the Fair Labor Standards Act. That's not the
6 purpose of showing this. The purpose was to merely point
7 out that the nature of the compensation matched up with the
8 nature of the job duties that are set forth in all of these
9 documents. It's set forth in the employment agreement, in
10 the compensation plan and the duties document. It was
11 plainly and clearly discussed, and not a single plaintiff
12 disagreed, not a single Plaintiff objected, not a single
13 plaintiff ever made a claim that they had some problem with
14 this.

15 And that the plaintiffs not only thought that their
16 compensation package was fair, but they knew it was better
17 than hourly with overtime, and this is the reason why many
18 of the mortgage bankers came to Quicken Loans, those
19 commissions. They wanted this compensation plan: A
20 guaranteed salary, which they knew they would get regardless
21 of any closed loans and they knew they would get it for
22 whatever financial services and advice and consultation,
23 plus commissions, and that they could earn between 100 and
24 200 thousand dollars. And we see that many did.

25 Mr. Ortman, Mr. Bettis, Mr. You, they all testified

1 they accepted the job in part because of the compensation
2 package and the commissions.

3 Now I would like to look at the duties document,
4 Paragraph S, if you can put that -- I think there's a board
5 on that.

6 And we heard a lot of testimony that during the time
7 period at issue there was an open door policy, and in fact
8 it was put into a document that mortgage bankers were
9 required to actually read and sign and Paragraph S is a
10 mandatory obligation of the mortgage bankers to bring to the
11 attention of their manager or their manager's manager if
12 there is some problem.

13 And there is an acknowledgment that says the same
14 thing -- I think it's Board 19, if you can put that up, or
15 18 -- which reiterated this open door policy and the
16 mandatory procedure.

17 Now, the interesting thing is and the telling thing is
18 not one single plaintiff joined this lawsuit during -- until
19 long after it had been filed. The lawsuit was filed in May
20 of 2004. Well, Mr. Henry joined early, I guess, but most
21 all of the other plaintiffs it was two to three years after
22 the lawsuit was filed.

23 During the time period they were employed by
24 Quicken Loans, not one time, despite this open door policy,
25 despite the mandatory requirement, did they ever raise an

1 issue with anyone at Quicken Loans. Their manager, their
2 manager's manager, Dan Gilbert.

3 We saw Ms. Lilly emailed Dan Gilbert within the first
4 two weeks of her employment asking about a child care issue.

5 We heard about Mr. Persails approaching Mr. Gilbert out
6 of the blue at a ceremony, at an awards banquet.

7 Not one plaintiff ever, ever suggested that they should
8 be paid in a different way.

9 And, for instance, Mr. Semilia. I'll put his picture
10 up. Mr. Semilia had much shorter hair when he testified
11 here, and I think he lost some weight.

12 And how about Mr. Bazzi? Mr. Bazzi looked very similar
13 to this.

14 They joined the lawsuit, they acknowledged, after they
15 had filed bankruptcy and they were in need of money. If the
16 plaintiffs really felt they were being cheated or they
17 wanted to be paid hourly with overtime, they would have come
18 forward. They would have said so. It's only after they
19 were solicited by an out-of-town law firm, out-of-state law
20 firm that these plaintiffs joined this lawsuit.

21 And we have heard about that. Let's put up Exhibit
22 P73. Mr. Lukas went through this email that Mr. Gilbert
23 sent company wide to disclose the nature of this lawsuit.
24 Mr. Lukas went through it again today, in part, where
25 Mr. Gilbert disclosed the nature of the lawsuit, and he

1 notes in there that Mr. Henry and his out-of-state law firm
2 even sued Mr. Gilbert and Mr. Emerson personally. And
3 Mr. Gilbert made clear it was up to the mortgage bankers to
4 decide whether they wanted to join the lawsuit or not and
5 that there would be no penalty, no negative consequences for
6 joining the lawsuit.

7 Mr. Gilbert notified everyone that Quicken Loans would
8 vigorously defend the lawsuit, and Mr. Lukas was suggesting
9 during his closing that it was Mr. Gilbert's show and he
10 would never settle, period. Well, what Mr. Gilbert says in
11 here is that it was about right versus wrong. He was not
12 going to be extorted into some sort of settlement by
13 Mr. Henry and an out-of-state law firm, even though that it
14 may have been less costly and even though he may not have
15 been fighting for all of these years, but it was right
16 versus wrong.

17 Why are we here? That's why we are here. It's right
18 versus wrong.

19 The mortgage bankers were paid two, three, four, five,
20 six times more in compensation. They were paid a
21 compensation package that did not include overtime but
22 included commissions to compensate them more, and now, after
23 being contacted by the out-of-state law firm, what's
24 happening is the plaintiffs are seeking overtime on their
25 guaranteed salary plus their commissions. They are not

1 offering to pay those back, and it creates that unfair
2 result that we were just looking at on those boards.
3 Ms. Lacey, Mr. Baumann, every single one of those boards
4 shows the unfair result.

5 And Quicken Loans pays overtime. They pay overtime to
6 those that they understood qualify. An example of that is a
7 frontline agent.

8 But it's going to be up to you, and Mr. Gilbert put
9 that in his email. It will be up to the jury, but we are
10 not going to roll over into some sort of quick settlement
11 like these cases go because it's right versus wrong and we
12 are going to defend.

13 And there were a series of meetings after that with
14 Mr. Emerson, Mr. Gilbert, Mr. Farner and the mortgage
15 bankers indicating that they could join the lawsuit if they
16 wanted, but they would be defending the lawsuit, Quicken
17 Loans, but there would be no consequences at all, none, for
18 any plaintiff that joined. And there were solicitation
19 letters that were sent by plaintiffs' counsel, even phone
20 calls. So the plaintiffs all knew about this, and they,
21 most of them, joined two, three years later.

22 So who are these plaintiffs that are seeking this
23 result, seeking more money on top of their guaranteed salary
24 and commissions? Who are they?

25 Well, they are a small group of former mortgage

1 bankers. None of them work at Quicken Loans any longer.
2 Most of them worked for a very short period of time,
3 six months or less, about six months or so. Many went from
4 job to job before for short periods of time, and many have
5 gone from job to job after for a short period of time.

6 There are 359 plaintiffs but from over 3100 mortgage
7 bankers who worked during the time period at issue and could
8 have joined the lawsuit.

9 As testified by Mr. Ortman, he not only received
10 solicitation letters from plaintiffs' counsel, he also
11 received telephone calls from the plaintiffs' counsel, as
12 did his wife to try to convince her to convince him. Now,
13 Mr. Nichols didn't like that, and he pointed his finger and
14 raised his voice, but Mr. Ortman didn't back down.

15 And Mr. Ortman testified to the reason why he didn't
16 join the lawsuit despite the contacts. He didn't think it
17 was fair. He didn't think he was entitled to anything more.
18 He didn't think he deserved anything more. The compensation
19 package was better. He preferred it. He wanted that.

20 And let's put up Mr. Ortman and see if he was right
21 about that. Mr. Ortman, again, is not an employee of
22 Quicken Loans any longer. He worked there for -- I think
23 Mr. Lukas said a short period of time. He really worked
24 there for three years, and Mr. Ortman, he came in here
25 pursuant to a subpoena. He was compelled to appear.

1 So what did he testify? His whole earnings in 2003, he
2 testified, was \$90,000. His guaranteed salary was 24,000
3 that year, 66,000 in commissions. \$1,333 he would have been
4 paid if he was paid overtime instead of the commission,
5 which means he would have earned this, 25,333. Instead, he
6 was paid this, almost four times as much. Mr. Ortman was
7 right, he wanted this. He did not want this.

8 But the plaintiffs in this case, what they want is they
9 want this plus overtime on top of both of these components,
10 which, if it was Mr. Ortman, if he had joined the lawsuit,
11 it would be another 5,000. So what he would be asking for
12 would be to be paid 95,000, when this is what he would have
13 received to begin with, 25,333.

14 Mr. Thompson also testified. He was the second witness
15 we called, and Mr. Thompson, let's see what Mr. Thompson --
16 he also testified he didn't join the lawsuit and he
17 explained why, it was the same reason, and he was right,
18 too.

19 Mr. Thompson, he earned 89,000 in 2005, 28,000 in
20 guaranteed salary. His commissions were 61,000. This is
21 what he would have been paid if he had worked every hour
22 every day 52 weeks, and we know that's not correct because
23 Mr. Thompson indicated he took breaks and time off and
24 participated in fun-time activities and personal calls, but
25 even assuming that, that's what he would have made. Here is

1 what his salary would have been with the overtime, 33,385.

2 This is what he received, \$89,000.

3 And he didn't feel right coming into court and joining
4 the lawsuit because this is what he would have asked for
5 additional, \$15,000 more, which means that he would have
6 been asking to be paid \$106,115. But this is what he would
7 have been paid if he was paid on an overtime structure,
8 33,385. That's what this case is about.

9 Now, there were 25 plaintiffs who showed up to testify
10 at trial. That was their choice.

11 How did they select the 25 plaintiffs? Well, I'm sure
12 they picked the 25 best plaintiffs out of 359 plaintiffs.
13 They could choose any ones they want, it was their choice,
14 and no one said that they couldn't all testify.

15 And no one said they had to join in one lawsuit as a
16 collective action. This is not a class action, where
17 one person files and everyone else in the class joins in and
18 it's just represented that way. This is a collective
19 action. Each plaintiff has their own claims.

20 So they brought 25 people in to testify. They picked
21 them. These are, these are their best witnesses.

22 And we saw and heard who these plaintiffs really are.
23 Now, Mr. Lukas indicated we pounded on them. Well, wait a
24 minute. When a witness comes in here to testify in support
25 of their claim, they have an obligation, a duty to tell the

1 truth. And you are the judges of the facts. You assess
2 their credibility. When Mr. Semilia comes in here and if he
3 didn't tell the truth, well, he may not be able to support
4 his claim. And you also will be instructed by Judge Murphy
5 that if in fact you find that a particular witness was not
6 truthful you can disregard his or her testimony entirely
7 because what is it that you can believe from someone if they
8 are not truthful under oath?

9 So let's -- we have got Mr. Semilia up here, so let's
10 start with him. He contended on his direct examination he
11 was fired because he joined the lawsuit. That's what he
12 said, but the reality of the situation is after going
13 through some exhibits with him he admitted that, well, maybe
14 he was fired for a different reason.

15 And what was that other reason? Well, Mr. Semilia, he
16 lied on his employment application. He also lied on
17 two licensing applications as a mortgage banker submitted to
18 other states while he was working at Quicken Loans.

19 He checked the boxes on each of these -- the employment
20 application and these two licensing documents when he was --
21 as no when he was asked if he had ever had any type of
22 license suspended or revoked in any state, something very
23 important to a mortgage banker at Quicken Loans because they
24 are going to seek to be licensed. This is a regulated job
25 in a lot of different states.

1 So let's put up Exhibit D66. This was his employment
2 application. And when I first showed this to him, it's very
3 hard to read right now, but there are two questions,
4 Question 4 on Page 8 and Question 5, I asked him if he's
5 ever had any license revoked or suspended in any state, and
6 he checked the box no. And when I first asked him about
7 this, he was under oath, and he said those were truthful
8 answers.

9 Then there were two license applications I asked him
10 about. Those were Exhibits D68 and D69, and it's the same
11 question, Question 2 on each of these. One is for
12 Connecticut, one is for New Jersey, asking:

13 Have you ever been refused any license --
14 I'm sorry.

15 Have you ever been the subject of actions
16 (cease and desist orders, contempt orders,
17 injunctions, license suspensions or
18 revocations) before any regulatory agency,
19 state or federal?

20 Now let's show the next one. He checked no. At
21 first when I asked him about that he said it was truthful,
22 that answer, under oath. These are documents he signed, he
23 prepared. This is for the state of New Jersey. I believe
24 it's Question 2:

25 Have you ever had a license or right to

1 engage in this or any other business or
2 profession, revoked, denied, suspended or
3 restrained by any agency of this state, any
4 other state or by any federal jurisdiction?

5 He said that was a truthful answer.

6 Well, the problem is that there was another document
7 that I showed to him and he had to admit that not only did
8 he lie on all three of these documents, the employment
9 application and the two licensing applications in New Jersey
10 and Connecticut, but he had also lied under oath to you in
11 this courtroom when he denied that those were untruthful
12 answers.

13 And let's put that exhibit up. It's Exhibit D67, the
14 Order of Ohio, Department of Insurance. Here it is. He was
15 confronted with this.

16 Move it up to see the punchline on this.

17 It is, therefore, ordered that Semilia's
18 licenses as an insurance agent in the State
19 of Ohio be and hereby are revoked pursuant to
20 the authority granted.

21 And their revocation was immediate.

22 Why was it being revoked? Because he had solicited and
23 sold Robert B. Kaufman an automobile insurance policy, but
24 he failed to disclose that he was not appointed by the
25 underwriter, and then he accepted a premium payment of

1 \$224.52 but failed to either obtain insurance or return the
2 payment. He pocketed it.

3 And when confronted with this on the stand, Mr. Semilia
4 admitted his answers in the employment application were
5 false, his answers in the license applications were false,
6 and by admitting that, his answers under oath were also
7 false.

8 So Mr., Mr. Semilia, we'll put up here what we remember
9 Mr. Semilia for. There we go. He lied. Not only is this
10 lying, but this is also fraud. This is misleading
11 Quicken Loans into believing that he had never had a license
12 revoked and also misleading the states of New Jersey and
13 Connecticut when he's applying for application as a
14 regulated mortgage banker, licensing applications that he
15 signed and attested to being accurate.

16 So Mr. Semilia, this is some sideshow? What kind of
17 sideshow is that?

18 Is this someone that you would believe? Can you
19 believe a word this guy says? It's up to you. You assess
20 his credibility.

21 Are you going to give Mr. Semilia overtime? He was
22 fired because he lied and Quicken Loans found out about it
23 on something that was very important, applications to become
24 licensed as a mortgage banker on behalf of Quicken Loans in
25 other states.

1 Now, let's move on to Mr. Gurney. Mr. Gurney testified
2 as a plaintiff in this case. This is Mr. Gurney. I think
3 he's here in the courtroom today. Yes, he is.

4 And Mr. Gurney acknowledged on cross-examination when
5 my father was cross-examining him, he acknowledged that his
6 resume that he prepared, that he circulated, that he wrote
7 in his own words, stated what his job duties were as a
8 mortgage banker at Quicken Loans. And what did his resume
9 say? It didn't say anything about sales, and that's a
10 problem because Mr. Gurney on direct examination came in
11 here and said sales, sales, sales, sales, sales, sales
12 because that's what Mr. Lukas said is their case. That's
13 how they can win this case, sales, sales, sales. So
14 Mr. Gurney came in here, sales, sales, sales.

15 Well, but what he put on his resume was consulting with
16 clients and conducting an effective interview and needs
17 analysis. Nothing about sales. Consulting and needs
18 analysis. That's what he did as a mortgage banker at
19 Quicken Loans. His own words. Quicken Loans didn't prepare
20 this. Mr. Gurney did.

21 Now, he didn't want to admit to this because that
22 undercuts his sales, sales, sales testimony. So what did he
23 do? Mr. Gurney claimed that he lied. He claimed he lied on
24 his resume. He claimed he lied on his resume that he
25 prepared and circulated.

1 Now, Mr. Gurney definitely was lying, so we'll put this
2 up. Mr. Gurney definitely was lying at some point. He was
3 either lying on the witness stand because he didn't want to
4 undercut his sales, sales, sales testimony and his attempt
5 to cash in on a claim for overtime or he was lying on his
6 resume that he prepared after he worked at Quicken Loans
7 that he put in his own words and circulated. There
8 certainly was no reason to lie on that resume, but there
9 certainly was a reason to lie in this courtroom. It's up to
10 you to decide. Are you going to give him overtime,
11 Mr. Gurney?

12 Nicole Abate. She testified, and she painted a very
13 ugly picture of the Quicken Loans work environment. Is this
14 a sideshow? We didn't put her on. This is one of the
15 hand-picked plaintiffs, Ms. Abate.

16 She came in here. She painted this very ugly picture.
17 Well, how would that relate to job duties? How would that
18 relate to hours? Well, she was trying to make it suggest
19 that she had to work all of these hours, it was a harsh
20 condition, she had no choice, and they wouldn't let her
21 leave and all of this very ugly picture.

22 But, but we had her resignation letter. If you can
23 make that a little larger. And what did she write in her
24 own resignation letter? This is what she wrote.

25 It is with both regret and anticipation that

1 I submit this letter of resignation effective
2 March 21, 2005. This decision has nothing to
3 do with the exceptional opportunity you have
4 provided me here. I have accepted a position
5 with another company, an opportunity to
6 further my current career goals and achieve
7 growth within the new company through a
8 supervisory role.

9 It has been my genuine pleasure to work
10 for Quicken Loans during this last year. I
11 have enjoyed working with Quicken Loans' fine
12 staff of professionals and colleagues and
13 will miss my associations here. I wish you
14 and Quicken Loans continued success in all
15 your endeavors.

16 Thank you for allowing me to serve
17 Quicken Loans.

18 Well, there is a problem here. This undercut her
19 entire direct examination about all of these harsh, harsh
20 tactics and this harsh work environment. So what did
21 Ms. Abate do on cross-examination? She claims she lied in
22 her resignation letter. She claimed that she lied because
23 her new employer might contact Quicken Loans for the purpose
24 of getting a reference. But her resignation letter
25 indicates that she already had a new employer. It says it

1 right in there. They didn't need to contact Quicken Loans.
2 She already had the job. And the things she said she was
3 lying about, if you took them out, that wouldn't burn any
4 bridges, it wouldn't cause any problem. You wouldn't need
5 to put in such nice words in a resignation letter not to
6 burn bridges.

7 So Ms. Abate, another plaintiff, came in here and she
8 definitely lied. She lied one time. She was either lying
9 on the witness stand in order to not have her direct
10 examination undercut or she lied on her resignation letter.
11 Certainly there was a big reason for her to lie on the
12 witness stand under oath. There was no reason to lie on her
13 resignation letter. She had already gotten another job, and
14 she certainly didn't need to put that kind of language in
15 there not to burn bridges.

16 So it's up to you to decide, it's up to you to decide
17 whether or not Ms. Abate should be given overtime.

18 Let's put Ms. Abate, she lied. Through her own
19 testimony she said she lied.

20 Sarah Little. Sarah Little, she testified that the
21 work environment was so stressful to her, to her health that
22 she missed a lot of work and had to quit. Now, her
23 employment application made clear that she had a history of
24 working at jobs for a short period of time and she had
25 difficulty handling any stress. And during the initial

1 training before she even started the job as a mortgage
2 banker, her favorite part, she said, if you could put this
3 up, was winning prizes because I needed that stress ball.
4 And I asked Ms. Little about that. She said she really
5 needed that stress ball. It's something that you can
6 squeeze and alleviate stress. Well, I don't know how she
7 needs the stress ball before she even started the job if the
8 job was what gave her so much stress. This was during
9 training. She hadn't even started as a mortgage banker yet.

10 Then Ms. Little claimed on direct examination again,
11 along the line of Mr. Lukas, sale, sale, sale, that's how we
12 win this case. Well, there's a problem because we had
13 Ms. Little's own words in her resume. And let's put that
14 up. It's Exhibit D125. Let's see what she said.

15 You will have to make that larger because it's small
16 print.

17 But she prepared this. No one told her what to write.
18 There was no reason to be lying.

19 But she wrote that she was a mortgage banker. That's
20 the first thing that she did. And then she said she took
21 loan applications, she pulled credit reports, qualified
22 clients for home loans, handled personal financial documents
23 and employment records. I don't see anything about sales in
24 there at all.

25 And Ms. Little also was confronted with the tests that

1 she took. Remember, we showed her the tests that she took
2 in training and asked her what portion of those tests
3 related to sales? Which those tests, very little, one
4 question out of the entire test, related to sales.

5 Remember, there were all kinds of ratios and computations
6 and analysis and comparisons that needed to be done.

7 Ms. Little, she also talked about the number of hours
8 that she worked. She testified that she worked 65 hours a
9 week except for in training. She testified she didn't work
10 those hours during training.

11 But she missed 17 workdays, she acknowledged, during
12 her less than five months as a mortgage banker, plus legal
13 holidays. Apparently she wants overtime on those 17 days,
14 too.

15 So, Ms. Little, we will put up a few words for her, if
16 I can find them. Ms. Little, she exaggerated, exaggerating
17 her hours, not factoring in 17 days she missed work. Her
18 sales, sales, sales. And let's put up her own resume,
19 exempt duties, because those are the duties that she
20 admitted in her own words, not the sales, sales, sales that
21 Mr. Lukas was suggesting in court today.

22 Zane Kadro. Mr. Lukas indicated and referenced
23 Mr. Kadro today, that he came in to try to clear up
24 questions about his Series 6 and 63. It's interesting
25 because when he came in to clear that up what he ended up

1 acknowledging is that he lied on two license applications.
2 These license applications were to be a mortgage banker on
3 behalf of Quicken Loans in two different states.

4 This is the state of New Jersey, and Question 1 asks if
5 he's ever been indicted, arrested or convicted of any
6 offense or crime in that state or any other state or federal
7 jurisdiction. Mr. Kadro first tried to -- he seemed to be
8 waffling, but ultimately when shown another document
9 acknowledged that that was a false answer, that was
10 untruthful. He had been arrested, he had been convicted,
11 and he acknowledged at least two separate offenses and that
12 that answer should have been yes. Once again, submitted
13 while he was a Quicken Loans mortgage banker to another
14 state to become licensed.

15 And it happened in another. The Connecticut license
16 application as well asked the same question. Number 1:

17 Have you ever been convicted in any state or
18 federal court of any crime?

19 Mr. Kadro admitted that he should have checked yes, but he
20 didn't. Incorrect, untruthful answer to state licensing.

21 Now, Mr. Kadro also was back and forth on the hours
22 that he suggested he worked. At one point he said 75,
23 another time he said between 70 and 80, but this is a guy
24 who also admitted to being written up for being perpetually
25 late to work and he admitted to taking lots of smoke breaks

1 during working hours as well.

2 So you are the judges of the facts. You get to assess
3 credibility. Do you believe Mr. Kadro about anything? He
4 lied to two different states in his licensing applications
5 that were very important as a mortgage banker for
6 Quicken Loans business. And that's what you call fraud. He
7 was misleading them. He was trying to get a license, which
8 he did, for two different states by giving them false
9 information.

10 And I also submit that he exaggerated to exaggerate his
11 hours, 70, 75, 80. Well, he's not taking into account that
12 he came in late every day or perpetually late, and he also
13 is not taking into account that he took several smoke breaks
14 every day, let alone for personal calls and other things.

15 Now, let's put up Adam Persails, another individual
16 that Mr. Lukas referenced today. Mr. Persails testified.
17 If you recall, Mr. Persails came in and said he was old
18 school. He said he was old school, but Mr. Persails before
19 the case started claimed that he had 63 hours a week of work
20 and then during the case at trial that increased somehow to
21 65 to 70.

22 But he had to admit that he missed several days as a
23 mortgage banker during his short stint. He missed nine
24 workdays plus legal holidays in a four-month span on the
25 job, and he was paid for it.

1 He also admitted that he arrived late to work from time
2 to time because he car-pooled with his relative, with his
3 uncle.

4 And he admitted to having lied on his employment
5 application. Now, this isn't something that we actually
6 knew. This is something when I was asking him questions he
7 admitted. Apparently he didn't want to lie about it any
8 longer. But he did lie on his employment application,
9 that's Exhibit D143, where he said he went to two different
10 community colleges, and he admitted that he never attended
11 one and the other he might have taken some classes for a
12 very short period of time. But here he said he took a year
13 and-a-half at each, and he gave grade point averages. Grade
14 point averages at a school that he never attended. That's
15 old school, I guess.

16 Mr. Persails was also very evasive and combative during
17 his testimony. It was very difficult to get a straight
18 answer.

19 So we'll put up a few words on him. Mr. Persails, he
20 was evasive, certainly old school, if that's what old school
21 means, that's what he said, and he lied on his employment
22 application and he exaggerated his hours.

23 Are you going to give Mr. Persails overtime on top of
24 his guaranteed salary and commission? It's up to you.

25 Chanda Whitted. Her picture is already up here. And

1 she contended that she did not take licensing courses, nor
2 did she seek to be licensed in other states while employed
3 at Quicken Loans. She said that on direct examination and
4 suggested the certificates, they must be made up.

5 And she said it as part of her cross-examination, too,
6 and Ms. Whitted was the second witness who testified. But
7 when she was shown the licensing applications that she
8 filled out in her own handwriting and signed them, we showed
9 her some examples, one for New Jersey and one for
10 Connecticut, well, lo and behold, she suddenly remembered
11 that, yes, and she admitted that, yes, she did take
12 certification courses, yes, she did seek licensing in other
13 states. 100 percent about-face from her direct testimony
14 and before she was shown those documents.

15 In addition, Ms. Whitted additionally denied that she
16 was operating a side embroidery and silkscreen business with
17 her husband. She acted like she didn't know what I was
18 talking about but ultimately admitted to that, and she also
19 ultimately admitted that she may have spent time working on
20 that while she was at Quicken Loans.

21 She also admitted that she possibly could have been
22 perpetually late to work. I don't know what that means,
23 possibly I might have been perpetually late to work. She
24 was perpetually late to work.

25 And she admitted on cross that she didn't work more

1 than 40 hours during her initial training. The reason why
2 that was important is because she at first suggested that
3 she had on direct examination, but on cross she admitted
4 that that wasn't correct and that she actually did not work
5 more than 40 hours during her initial training.

6 And then she also contended on direct examination
7 sales, sales, sales, but during her cross-examination when
8 she was confronted with her employment agreement and
9 employment documentation she admitted that her job duties
10 fell within the financial services. It wasn't all sales,
11 sales, sales. She had gathered information, analyzed,
12 evaluated, educated.

13 So Ms. Whitted, we have a few words for her. One --
14 let's see if I can find her. There we go.

15 Ms. Whitted lied about whether she was seeking
16 applications and took certification courses. She
17 acknowledged her exempt duties, and she exaggerated her
18 hours. One example of that is when she said that she was
19 working all the time, but in fact she had a side embroidery
20 business she was working on with her husband.

21 Nicole Lilly. We remember Nicole Lilly. She painted a
22 very harsh work environment at Quicken Loans. She claimed
23 that her team leader, Charlie Warah, Mr. Warah was a tyrant
24 both in terms of hours and leadership.

25 She claimed that she brought her 11-month-old son to

1 work four days a week and leashed him to her desk. There
2 was nothing about setting up a bed, like Mr. Lukas
3 indicated. She said she leashed him to her desk. Now, I
4 don't know whether a parent would actually leash their child
5 to a desk. I certainly wouldn't do that.

6 Now, Mr. Nichols tried to test that so he asked
7 Mr. Ortman. Mr. Ortman was on the same team, the same
8 mortgage banking team as Ms. Lilly, worked side by side with
9 her. Mr. Ortman is a former employee. He is not employed
10 by Quicken Loans now. He was here by a subpoena to testify.

11 So Mr. Nichols asked Mr. Ortman about Nicole Lilly and
12 her bringing her son to work. And what did Mr. Ortman say?
13 He doesn't remember a single time that Ms. Lilly brought her
14 son to work, 11-month-old son, and certainly he would
15 remember that if the child was leashed to a desk.

16 And I've got to tell you, if she really did do that,
17 first off, he must be a lot different than the
18 11-month-old's that I know, including my own kids, because I
19 was not able to do any work if I was watching my
20 11-month-old daughters that I have got. There is no chance.
21 I mean you've got diapers, feeding. You have to watch an
22 11-month-old very closely because they can get into a lot of
23 trouble.

24 Ms. Lilly tried to cover up that and say, well, my son
25 was playing basketball. At 11 months old? Playing

1 basketball? How long is the attention span of an
2 11-month-old baby? He is not playing basketball for all of
3 that time she claims to have been there.

4 So what happened next? We showed Ms. Lilly her
5 resignation letter, and Ms. Lilly's resignation letter
6 undercuts her entire testimony about this harsh work
7 environment, having to bring her son and leashing him. What
8 did she say? She wanted to thank the company for the time
9 that she spent. She is walking away sad, but the position
10 taught her an invaluable amount of knowledge.

11 I especially thank Charlie Warah -- this
12 tyrant -- for his leadership. Your support
13 throughout the past 16 months has been
14 phenomenal.

15 Remember, Ms. Lilly, when she saw the word phenomenal
16 said, well, I'm a creative writer.

17 I pray that our team has continued success
18 and that the company sees the value you add
19 to its sales team.

20 This is Ms. Lilly, who says it was such a harsh environment
21 and a tyrant in Charlie Warah. Is this someone that we can
22 believe?

23 Now, she also claimed that her job duties were pure
24 sales. Sales, sales, sales, that's the Mr. Lukas mantra.
25 Let's see what she put in her own resume that she prepared.

1 Is this a sideshow to see what words they used when
2 they describe their own job? Is it a sideshow to bring out
3 a document to show that they are not telling the truth in
4 terms of their work environment and what their director is
5 like, not a tyrant but someone she actually praises as being
6 phenomenal?

7 So what did she say? She educated and consulted
8 clients on the mortgage industry. That's exempt duties.
9 Now, she has a second line, too. It says:

10 Utilize assumptive selling techniques to
11 obtain client commitment.

12 Do you see that? That's accurate. That's asking for the
13 business. That's the sales component.

14 These are two different things. She educated and
15 consulted clients on the mortgage industry. That's
16 one thing she did, and then the sales component, which you
17 heard about from all of these other mortgage bankers that
18 Quicken Loans called to testify is what she says she did.
19 She utilized assumptive selling techniques to obtain client
20 commitment. That's the portion of asking for the business,
21 asking to move forward with the loan, a specific loan
22 commitment.

23 Ms. Lilly also exaggerated her hours. She changed her
24 estimate slightly from 58 before the case into 60 during the
25 trial, and she admitted to all of these personal calls, but

1 I don't know how she would have been working 60 hours when
2 she had 722 calls to her fiancé, 100 calls to her sister,
3 308 personal calls to another number, 103 calls to her son's
4 nursery school and others, and she included in her estimated
5 hours, if she really was bringing her son and leashing him
6 to her desk, the drive time to leave and come back.

7 So, Ms. Lilly, are you going to award her overtime?
8 Are you going to give it to her? It's up to you, but she
9 definitely, she definitely lied.

10 Let me find her here. There she is.

11 And her resume has exempt duties in her own, in her own
12 words, and then she also exaggerated her hours as well as
13 the nature of the work environment. But it's up to you to
14 decide.

15 Michael Lofton, I'll put him up. He testified. There
16 he is, Mr. Lofton.

17 Mr. Lofton testified -- he initially claimed his hours
18 were 69 hours before the trial. During the trial it changed
19 down to 55 to 60 hours. I guess that's a benefit to us.

20 He denied he had poor work attendance. Well, he was
21 then confronted with Exhibit D101 where he was specifically
22 written up for his work attendance.

23 Your absenteeism and tardiness is becoming
24 excessive. He would call in the day and
25 request the time off, and he consistently

1 would arrive 15 minutes to an hour late.

2 Over the past couple of weeks he failed to
3 come in to work over three different times,
4 and he failed to come on July 11th at all.

5 We were having repeated discussions with him.

6 So I don't know how he could have so many hours he's
7 working. He's not even showing up on a regular basis during
8 his short stint.

9 He also was sent on a trip, he testified. He was sent
10 on a cruise to the Bahamas by Quicken Loans where they paid
11 for it. He admitted to personal calls and admitted to
12 surfing on the internet for personal business, not work
13 related. He acknowledged one of his favorite sites was
14 ESPN, of his, and that there were several others.

15 When he was confronted with his exaggerations about
16 hours and duties, he would repeatedly answer "maybe" on
17 cross-examination. That was his way of not -- of trying to
18 waffle so that he wouldn't be caught in another lie.

19 So for Mr. Lofton we'll put up "maybe" because that's
20 what almost every answer was. He surfed the net. He had
21 personal calls. He exaggerated. I would say "maybe" is
22 really evaded -- evasive, evade the answer. Instead of
23 acknowledging the truth, he just said maybe, maybe.

24 It's up to you to decide. Are you going to give
25 Mr. Lofton overtime on top of his guaranteed salary and

1 commission?

2 Hassan Bazzi. Hassan Bazzi, Mr. Lukas takes exception
3 that it was brought out that he had filed bankruptcy, and
4 somehow he suggested we had a stack of paper on his cousin.
5 We didn't have any stack of paper on his cousin. We had
6 one document. It was a resume, and I said when I handed it
7 to him I'm not sure if this is you or someone else, can you
8 identify that. When I was asked if I was going to use it in
9 evidence, I said I didn't know if it's his. One document.
10 He said it was his cousin's. We put it away.

11 I assume he was being truthful there, but he was not
12 being truthful on his employment application, and this is
13 not something we dug up. This is going through routine
14 questioning to establish that he had actually graduated from
15 school before he was a mortgage banker to address some of
16 these positions that Mr. Lukas was taking that, well, they
17 had no background, they had nothing but sales.

18 So I said you've got a degree, right? So you've got a
19 degree from Eastern Michigan in arts management, a B.A.?
20 Well, he testified he didn't have a degree.

21 And what did he do when he was confronted with that and
22 now he admitted that he lied on his employment application?
23 Well, on the witness stand he then made up, well, I had
24 credit, I just didn't walk through graduation.

25 Well, I don't know anyone who can get a degree and

1 doesn't say they have the degree if they didn't walk -- you
2 don't have to walk through graduation to get your degree.
3 He admitted he never even earned the degree, period, but
4 somehow he felt the need to lie to Quicken Loans on the
5 employment application.

6 Now, Mr. Bazzi also testified that he had 72 hours a
7 week he worked, and I would like to put up Exhibit D201.
8 Now, what's interesting about this is Exhibit D201 is the
9 talk time. Mr. Lukas seemed to make light of this, but this
10 is an important document. The talk time document tracked
11 based on the raw data of the telecommunication system, CMS,
12 all of the time, all of the telephone time, every single
13 minute starting from dialing out on outbound calls and
14 ringing for inbound calls. It measured all calls. This
15 doesn't except out personal calls. This doesn't except out
16 calls to internal, a director. This doesn't except out
17 calls to outside realtors or attorneys. It's everything.

18 And Mr. Bazzi had 8 hours and 49 minutes per week on
19 average. That's what he had. That's not even, that's not
20 even two hours a day on the phone. That's approximately an
21 hour and-a-half, even less if he worked a six-day workweek,
22 like he said.

23 So he said he worked 12 hours a day. So 12 hours a
24 day, but he spent less than an hour and-a-half a day on
25 the phone. So what does that mean? That means that for

1 10 1/2-plus hours he's doing something other than on the
2 phone, and Mr. Lukas is suggesting that this is a call
3 center, telemarketer. They are just dialing, dialing,
4 dialing. Well, this system measures when you are dialing.
5 It starts when you dial. So it records the time for all of
6 the dialing, too.

7 So if he was on the phone for less than an hour
8 and-a-half a day, but he says he worked 12 hours a day, what
9 was he doing for the other 10 1/2 hours? Now, either he
10 really wasn't working another 10 1/2 hours and he's
11 exaggerating his hours or he's doing something other than
12 sales because he's not communicating with the clients here.

13 So, you know, it's up to you, but that means there
14 would be another 63 hours a week that Mr. Bazzi filled in
15 doing something other than making calls, receiving calls or
16 being on the phone. And of course there is a great deal
17 more that mortgage bankers were doing when they weren't on
18 the phone. We have heard testimony they were doing analysis
19 and evaluation. They would manage the loan process. They
20 would manage their pipeline. They would study for licensing
21 certification and exams, ongoing training, problem-solving,
22 troubleshooting. They were keeping aware of market
23 conditions. But not for 63 hours.

24 Now, how do we know this is right? Well, Mr. Nichols
25 gave Ms. Booth a whole hard time about this exhibit. He

1 said I have got some report on Ryan Henry.

2 I don't know what that report was. It was some
3 compilation report not generated by the telecommunications
4 system. Ms. Booth relied upon the telecommunications system
5 raw data, and at lunch she went back and checked and it
6 worked out.

7 But we know that Mr. Bazzi didn't work 72 hours a week.
8 How do we know that? Well, his director came in here and
9 testified, Mr. Victor You. And Mr. Victor You testified
10 that he was a new director and Mr. Bazzi was under him as a
11 mortgage banker, and Mr. Victor You testified he was the
12 first to get here in the morning, Mr. Victor You himself,
13 and the last to leave and he made sure that was the case
14 because he was a new director, brand new, and he confirmed
15 he didn't work those kind of hours, there's no way that
16 Mr. Bazzi did because Mr. You was there in the beginning and
17 the end.

18 So let's put up a few works for Mr. Bazzi. He lied on
19 his employment application. There he is. His phone time,
20 8 hours and 49 minutes per week on average, less than an
21 hour and-a-half a day, and he's exaggerating his hours.
22 There's not a chance -- not exaggerating but he's lying
23 about his hours according to Mr. Victor You and Exhibit 201.

24 It's up to you to decide. Is this a sideshow or can
25 you believe this guy about anything he says? It's up to you

1 to decide whether to give Mr. Bazzi overtime on top of his
2 guaranteed salary and commissions.

3 Mr. Ryan Henry. Mr. Henry testified that he built in a
4 \$1,000 processing fee on all of his loans. Well, my father
5 cross-examined him. He was confronted with actual loan
6 documents, and Mr. Henry had to admit that he had not done
7 so. He did not build in a \$1,000 processing fee. In fact,
8 none of those loans had any processing fee like that.

9 Now, Mr. Henry also testified that he took part in
10 sexual harassment training as part of Quicken Loans normal
11 program, and he was written up for some language he used.
12 But on cross-examination he admitted he actually had to take
13 sexual harassment training on more than one occasion because
14 of sexual harassment claims made against him and that the
15 sexual harassment claims didn't only involve language, it
16 also involved inappropriate touching, and he also admitted
17 he posted provocative and dirty photos on his computer
18 screen saver and circulated demeaning and offensive jokes
19 and references to co-workers.

20 He admitted on cross-examination that he hacked into
21 Quicken Loans systems after he was no longer employed there.
22 And how did he do this? Well, he had worked in the IT
23 Department, and he had the administrative password. So he
24 hacked in using the administrative password because his
25 password had already been deleted, and he bragged about

1 doing so on his blog.

2 He threatened to retaliate against Quicken Loans if
3 they came after him for violating his non-compete.

4 This is how he looked back when he was employed by
5 Quicken Loans. He has got a different hairstyle now, and
6 he's more clean-shaven. I think he's in the courtroom. Oh,
7 there he is.

8 Mr. Henry, if you recall, his talk time showed
9 32 minutes, and Mr. Nichols made a big deal of that. Well,
10 this was for the last four weeks of his employment, if you
11 look on there. It says the number of weeks with data, four.
12 This is the last four weeks that he was employed. He had
13 obtained another job at a competitor, Countrywide.

14 32 minutes for the four weeks was confirmed by the raw data.

15 Mr. Nichols was also trying to ask him questions from
16 some compilation report as to partial days that they didn't
17 have complete data, and that wasn't part of the four weeks.
18 The 32 minutes per week, that was accurate, it was
19 double-checked. Mr. Henry must have been doing something
20 different during those four weeks other than being on the
21 phone, and I suggest that he was already plotting his
22 departure and he was goofing around.

23 So what are the catch -- what are the phrases that --
24 what are the phrases as far as Mr. -- that we can remember
25 Mr. Henry about? Well, he lied, lied about the processing

1 fee, lied about his sexual harassment training and his
2 departure. He was very evasive, and he had phone time of
3 32 minutes for his last four weeks when he was moving on to
4 another job.

5 The very last witness that plaintiffs called that was a
6 plaintiff was Kelly Lytle Lacey, and she claimed to have
7 done nothing other than take deposits. That's what she said
8 on direct: I only did sales. I just took deposits.
9 Nothing else. By cross-examination she admitted that she
10 consulted with clients and recommended loan programs that
11 matched up with their needs that they could qualify for for
12 the past 10 years, including when she had worked at
13 Quicken Loans.

14 On direct examination she claimed that she only had
15 one loan product to offer at Quicken Loans, but on
16 cross-examination she admitted that there were numerous loan
17 programs and variations when she was pressed. She claimed
18 that Quicken Loans didn't have DU, a software program to
19 conduct preliminary underwriting by the mortgage banker, but
20 when pressed, she admitted that Quicken Loans did in fact
21 have DU, which is called Rocket.

22 She claimed not to have talked to her boyfriend as to
23 the reasons why he referred her to work at Quicken Loans in
24 the first place while he was working there, and she claimed
25 that she never talked to her boyfriend or her husband after

1 she had married him about how much he had earned at
2 Quicken Loans even though he was a plaintiff, too, and he
3 was sitting in the courtroom listening to her testimony.

4 I would like to put up her farewell letter, which is
5 Exhibit D207. She wrote it herself. She was talking about
6 what a great experience it was and it was unfortunate she
7 couldn't work any longer. She was moving on to get married
8 and taking some time off and that the last three years had
9 been wonderful and she had had the good fortune to work for
10 a company like that and for people like that.

11 And, you know, that was the case. There were so many
12 of the plaintiffs that acknowledged or admitted that they
13 had friend or relatives that referred them to Quicken Loans,
14 that were very happy at Quicken Loans, happy with the work
15 environment, happy with the corporate culture, happy with
16 the nature of their job, and especially with their
17 compensation packages. And Ms. Lacey was referred to
18 Quicken Loans by her then boyfriend, who worked at
19 Quicken Loans for seven years total.

20 So let's put up a few things to remember Ms. Lacey
21 about. There she is. We remember her about her personal
22 calls. We can also remember her about lying. She lied,
23 sales, sales, sales, one product, pretended that there was
24 nothing like DU. She was very evasive on cross-examination.
25 It was very difficult to get her to answer a question

1 straight.

2 And there was another thing that she lied about.

3 Every -- there was not a single witness that ever heard of a
4 three-strike policy. Not one witness ever testified to ever
5 hearing that voice mail that Mr. Lukas played. Not
6 one plaintiff admitted that they knew what the three-strike
7 policy was. All of the individuals that Quicken Loans
8 called never heard of a three-strike policy, no one ever got
9 a strike, but Mr. Lukas and the plaintiffs made a big deal
10 of this voice mail.

11 Ms. Lacey, she tried to say that she had heard of the
12 three-strike policy, the very last witness, apparently to
13 try to shore up this problem. She said, oh, yeah, I've
14 heard of that. I've heard of that from Tony Nuckolls and
15 maybe Darren. I've heard of that.

16 Well, when did you hear of that, Ms. Lacey? She
17 testified that she heard of that in 2002 from Tony Nuckolls.
18 Well, the voice mail that was played was in 2004. She
19 certainly didn't hear of the three-strike policy from
20 Mr. Nuckolls in 2002 because there wasn't anything like
21 that. There was not even a voice mail to that effect until
22 more than two years later.

23 So it's up to you. Are you going to award Ms. Lacey
24 overtime on top of her guaranteed salary and commissions?

25 The last example I will go through is Bill Pellow.

1 Mr. Pellow, here is a picture of him from during that time
2 period. He came in and testified. We'll make a new board
3 with Mr. Pellow here. Mr. Pellow had shorter hair when he
4 came in, and it looks like he may have lost a little bit of
5 weight as well.

6 And we saw and heard exactly who the plaintiffs are
7 relying upon to make their case. Mr. Pellow on
8 cross-examination, he admitted to committing fraud.

9 Now, why did they call Mr. Pellow? Well, they called
10 Mr. Pellow because they wanted to get into all of these
11 emails. I don't know how many there were. I didn't count
12 them. 50, 100, whatever it may have been. The emails that
13 make up their whole case, they wanted to get into those so
14 they needed someone to identify those.

15 And why did they need someone? There was not a single
16 plaintiff who received any of those emails. You didn't hear
17 from any of those plaintiffs that, yes, I saw that email, I
18 got that email, this was sent to me, sell, sell, sell. Not
19 one. So they called Mr. Pellow to come in and to identify
20 that these kinds of emails were sent even though none of the
21 plaintiffs ever got them.

22 Now, the problem with that is we didn't have to do any
23 digging with Mr. Pellow. Mr. Pellow admitted on
24 cross-examination why he was fired. Now, he had been a
25 successful mortgage banker at Quicken Loans. He testified

1 that he had earned \$150,000 in the year of 2003. 28,000
2 guaranteed salary, 122,000 in commissions.

3 Now, Quicken Loans did not hesitate to fire him for
4 doing the wrong thing. There were three things that he did
5 wrong. One is he caused Quicken Loans to loan him \$176,000
6 more on his own house than it was valued at, and he did that
7 by creating a phony AVM appraisal report that he cut and
8 pasted from another house. And he admitted to that on the
9 stand. He admitted he committed fraud. He admitted that he
10 cut and pasted and used this -- and created a phony AVM
11 report.

12 And I think over there we went through some of the
13 numbers, and it's still on the board there in writing. He
14 admitted to all of this. This guy committed fraud.

15 Now, in addition to that, he's not a plaintiff. He
16 could have been a plaintiff. He worked as a mortgage banker
17 during the time period. He was not a plaintiff, but his
18 mother and brother are plaintiffs in the case.

19 And when Mr. Pellow had been terminated, he sent an
20 email to Mr. Gilbert, a series of emails, and Mr. Gilbert
21 called him out for committing criminal fraud against Quicken
22 Loans.

23 And what did Mr. Pellow admit to doing? He sent him an
24 email back saying your words motivated me, Mr. Gilbert. And
25 that's why he was here. He came here to show up and try to

1 make a case for the plaintiffs. Mr. Gilbert's words
2 motivated him when Mr. Gilbert called him out for his
3 criminal fraud, and he's got a mother and a brother who are
4 plaintiffs.

5 Now, there are some other interesting things, important
6 things that Mr. Pellow admitted. One thing he admitted,
7 since he's not a plaintiff here, was that he never used the
8 sales process at all. At all, zero, never. And this is the
9 centerpiece of their argument: Every one has to use the
10 sales process. He never used the sales process.

11 He also admitted on cross-examination the nature of his
12 duties in terms of gathering information, advising,
13 consulting, recommending, educating, problem solving. All
14 of the exempt duties, he admitted to them. He admitted to
15 discretion as a mortgage banker, that they had discretion to
16 make independent judgments as to matters of significance and
17 went through a whole host of those.

18 Mr. Pellow, one other thing that was interesting. On
19 direct examination he acknowledged and admitted and
20 identified Exhibit P21, which was the sales process, this
21 laminated document that Mr. Lukas was flashing around.
22 Well, on cross-examination he admitted that that document
23 wasn't even in existence when he was working at
24 Quicken Loans. It was sometime later. I don't know why
25 during direct examination he identified it and made it sound

1 like it was something he worked with. Apparently it was
2 because he wanted to try to make the case.

3 Well, let's put up a few words to remember Mr. Pellow
4 by. Mr. Pellow, he committed fraud and he admitted to it
5 against Quicken Loans. Mr. Pellow admitted that the job
6 duties were exempt. He admitted to discretion and
7 independent judgment, and that's good enough to remember
8 Mr. Pellow.

9 This is who the plaintiffs are relying upon. Sideshow?
10 No. They brought him in here to try to make their case.
11 This is who they are using to make their case. And while
12 they are using him to make their case, he is making
13 admissions that actually support our case, exempts duties
14 and discretion.

15 I could go through the rest of the plaintiffs, but
16 there is just not enough time to do that. But there are a
17 couple of things. Every single plaintiff who testified on
18 direct went through this sales, sales, sales story, but then
19 on cross they admitted that their job was much broader than
20 that. They admitted that they gathered financial
21 information from the client and dug deep. They admitted to
22 analyzing and evaluating financial information to select
23 loan programs that matched up to the client's needs and that
24 they could qualify for. They admitted to making
25 recommendations to clients, to problem solving,

1 troubleshooting, managing their pipeline. They admitted to
2 setting pricing and managing the entire loan process, from
3 origination through closing.

4 Virtually every plaintiff who testified exaggerated
5 their hours. They didn't take into account their time off,
6 their vacation, their sick time, their personal days, their
7 missed days, tardiness, leaves of absences, breaks, their
8 non-work activities, personal calls, surfing the internet,
9 socializing, their playtime, their fun time. No, they are
10 asking for overtime on all of that, and they were making
11 their hours as if they were working when they were doing all
12 of that.

13 If the testifying plaintiffs are representative of
14 anything, they are representative of people who commit
15 fraud, lie, exaggerate, evade the truth, simply try to cash
16 in on something that they are not even entitled to in order
17 to obtain an unfair result.

18 And it's up to you to decide that. Are you going to
19 give them overtime compensation on top of their guaranteed
20 salary and commissions?

21 Now, there are another 334 plaintiffs who did not
22 testify at all. We didn't hear from them. We didn't see
23 them. That was their choice, they weren't barred from
24 testifying, and the plaintiffs could pick anyone they wanted
25 to testify. So they didn't come in here at all, and there

1 was no evidence presented at all as to how many hours they
2 worked, estimated or otherwise. I'm not talking about their
3 job duties. I'm talking about their hours. There is not
4 one piece of evidence that was presented.

5 There was no evidence that was presented as to the
6 amount of hours they worked during any particular week.
7 They didn't have to answer any questions as to their
8 attendance, their paid time off, their personal calls, their
9 non-work-related activities during work hours, their leaves
10 of absences. We never got a chance to question them under
11 oath at all. They didn't have to answer any question about
12 lies and fabrications and frauds and exaggerations, evasion
13 of the truth. There is nothing about them.

14 So let's put up -- this is these unknown plaintiffs,
15 unknown bankers. That's what we have for the 334. And what
16 do we know about them? Just a bunch of question marks.
17 That's it. Nothing else.

18 Are you going to give them overtime on top of their
19 guaranteed salary and commissions? You don't know how many
20 hours they worked.

21 Now, in terms of the plaintiffs, the testifying
22 plaintiffs, we asked every one of them do you know how many
23 hours the non-testifying plaintiffs worked? Nope.

24 Do you know who they are? Nope.

25 Do you have a clue? Nope.

1 Did you work even the same time frames? Were you
2 employed during the same time periods? Some said no. Most
3 of them, they were not even employed during the same time
4 period.

5 Other times some of the plaintiffs said, well, I don't
6 know, I never saw a list. They never saw a list? That had
7 to have been intentional. There must be some reason they
8 weren't shown that list. Plaintiffs all had the same
9 counsel. They came in here and said they never even saw the
10 list. There's a reason they didn't see the list. They
11 didn't know these other plaintiffs. They didn't know how
12 many hours they worked. They couldn't present any evidence
13 at all.

14 We showed the list to our mortgage bankers and former
15 mortgage bankers that we called in. They knew 10, 5, 20,
16 that's it, and they had no idea how many hours these people
17 worked. Not a clue.

18 There is simply no evidence at all, but it's up to you
19 to decide. Does the unknown mortgage banker -- are you
20 going to give them overtime on top of their guaranteed
21 salary and commission?

22 Now I want to move on and directly address the
23 administrative exemption. So there were two reasons that
24 Quicken Loans did not pay overtime to the plaintiffs that
25 the evidence has shown.

1 One reason is from a business standpoint they were
2 trying to make the compensation package better for the
3 mortgage banker. We heard from Mr. Farner, Mr. Gilbert,
4 Mr. Emerson, and we heard from various mortgage bankers or
5 former mortgage bankers that this compensation package was
6 better. We heard that from Ms. Booza, Mr. Thompson,
7 Mr. Baumann, Mr. Ortman, Mr. You, Mr. Bettis. We even saw
8 that from Ms. Lytle Lacey.

9 And, incidentally, we didn't hear any testimony from
10 Ms. Booza or Mr. Thompson, Mr. Baumann, Mr. Ortman, Mr. You,
11 Mr. Bettis or any of the witnesses that Quicken Loans called
12 in terms of lies or fabrications or frauds. They weren't
13 impeached in terms of their credibility or their
14 truthfulness. They didn't lie on the stand. No one brought
15 out any evidence that they lied on the stand or in any type
16 of employment documents or licensing applications. They
17 didn't claim that they lied in their resignation letter or
18 termination letter. They didn't claim that they lied in
19 their resume. There is none of that. It's only the
20 plaintiffs who came in here to testify that we had that
21 problem with.

22 Well, anyway, the second reason that Quicken Loans
23 didn't pay overtime was because their good intentions of
24 creating a compensation package that was better was
25 consistent with the law. And you will be instructed on the

1 administrative exemption, and if we can put up that board.

2 So Mr. Lukas showed you that there is an administrative
3 exemption. This is the, this is the administrative
4 exemption, and it's designed to protect individuals,
5 employees who are working in the financial services
6 industry. This is, this is like a mortgage banker or loan
7 consultant. This is not geared to the line worker or
8 factory worker. This is something different. This is the
9 financial services industry and specifically geared to
10 someone who works like a mortgage banker or a loan
11 consultant.

12 And so there's two parts, and one is whether their
13 primary duty is:

14 The performance of office or non-manual work
15 directly related to management or general
16 business operations of the company or its
17 customers.

18 And the second is:

19 Did the primary duty include the exercise of
20 discretion and independent judgment with
21 respect to matters of significance?

22 Mr. Lukas suggests the answer is no. We say the
23 evidence says yes.

24 So let's look at the first part, which is the primary
25 duty part.

1 So what does it mean by office or non-manual work?
2 Well, that's just simply non-manual labor. We are not
3 talking about working in a factory or working on a line.
4 This is for individuals working in an office like a mortgage
5 banker, and that's what the plaintiffs were doing.

6 And what does it mean by directly related to management
7 or general business operations of the company or its
8 customers? This language is broad and general, and it's
9 certainly broad enough and general enough to cover the
10 precise job duties of the mortgage bankers at Quicken Loans.

11 And the Department of Labor created a regulation that
12 explains examples of what is covered by this, and the Court
13 will provide you with instructions on the examples. So if
14 you find that plaintiffs' job duties fell within any of the
15 categories of the examples, then those categories would
16 be -- the job duties would be exempt. They would be part of
17 the administrative exemption.

18 So can you put up the examples. And this is --
19 Mr. Lukas showed you this, but we broke it down into numbers
20 so it would be easier to see.

21 Employees in the financial services industry
22 generally meet the duties requirements for
23 the administrative exemption if their duties
24 include work such as --
25 They don't have to include all four of these, just one of

1 them, that's it, and these are not sales. This is not
2 considered to be sales. Each one of these is not sales.
3 Any one of them would satisfy the exemption.

4 So the first one is:

5 Collecting and analyzing information
6 regarding the customer's income, assets,
7 investments or debts.

8 Mr. Lukas says no to that. I don't know how he can say
9 no to that. Every single plaintiff and witness that
10 Quicken Loans called indicated that absolutely the mortgage
11 bankers were doing Number 1.

12 Number 2:

13 Determining which financial products best
14 meet the customer's needs and financial
15 circumstances.

16 Mr. Lukas says no. I don't know how he is saying no. We
17 heard time after time that that's what they were doing.
18 They would gather information in order to see if they could
19 find loan programs that would meet the needs and goals of
20 the client. If they can't meet the needs and goals of the
21 client, there is nothing to provide them. So absolutely
22 Number 2.

23 Number 3:

24 Advising the customer regarding the
25 advantages and disadvantages of different

1 financial products.

2 Mr. Lukas and Mr. Nichols seem to be playing a semantic
3 game. This is exactly what they would do when they get back
4 on the phone and explain the nature of the loan options and
5 talk about what the advantages were and disadvantages
6 between one loan program and the other loan program. They
7 were trying to suggest that this meant something else,
8 disadvantages to the client. No, it's advantages and
9 disadvantages between the competing alternative solutions to
10 the client.

11 And, if you remember, Mr. Ortman was trying to testify
12 to that when Mr. Nichols was examining him and he was
13 talking about the pros and cons, and Mr. Nichols jumped in
14 and thought he was talking about conning someone, deceiving
15 them, but he was talking about describing the pros and cons
16 of loan options. Now, that was Mr. Ortman, who was a
17 mortgage banker no longer employed and who came in based
18 upon subpoena.

19 The fourth item is called:

20 Marketing, servicing or promoting the
21 employer's financial products.

22 Financial products, and I think we can all agree that that
23 was part of the mortgage banker's job duties, and that is
24 what every single witness testified to.

25 So even one of these job duties would be sufficient,

1 and let's look at a few documents that would help us decide
2 whether or not I am accurately reflecting the testimony.

3 Now, in the initial and the updated employment
4 agreement there's a reference to the job function. If we
5 could put up Board 1.

6 This is the purpose of the agreement, and this is
7 written before the lawsuit and after the lawsuit and during
8 the lawsuit. It says:

9 Employee desires to serve and to be initially
10 employed as and/or continue to be employed by
11 the company as a loan officer, sometimes
12 referred to as loan representative, mortgage
13 banker, senior mortgage banker, loan
14 consultant, senior loan consultant or similar
15 title, and to perform those duties that the
16 company may require in direct and in
17 connection with furthering the company's
18 business and interest.

19 That's what their job was, which ironically matches up
20 exactly with the general instruction that the judge is going
21 to give to you.

22 And let's look at Paragraph 2B of the initial
23 employment agreement. Now, this is before the lawsuit. So
24 Mr. Lukas is talking about making changes, but here are the
25 job duties, and the plaintiffs who signed this particular

1 document were all provided documents on the first day of
2 employment. So it says:

3 Originating mortgage loans; developing
4 referral sources to improve the company's
5 mortgage loan business; assisting with
6 processing, closing and funding of mortgage
7 loans he/she originates; overseeing the
8 mortgage loan process from origination
9 through post-closing, funding the loan;
10 achieving customer service and production
11 standards established by the company;
12 ensuring loans are originated, documented and
13 processed in compliance with all applicable
14 federal and state laws and applicable company
15 investor rules and guidelines; maintaining
16 and improving the company's mortgage loan
17 production sales; properly managing and
18 directing his or her subordinates and
19 effectively and efficiently carrying out the
20 missions and goals of the company.

21 This fits right within the general question one as to the
22 job duties and then each of the specific examples. It
23 covers all of them.

24 And this is signed by all of the plaintiffs, at least
25 the plaintiffs that were working at that time. There was an

1 updated one they signed, which had even more language in it.

2 So if that wasn't right, we saw there's an open door
3 policy. We also saw there's a mandatory reporting
4 requirement. There wasn't one plaintiff who ever suggested
5 that these were not their job duties, and when confronted
6 with this on cross-examination, absolutely they admitted
7 that they received this and that these were their job duties
8 and that they signed the document.

9 Now, there were plaintiffs who admitted to this
10 readily. One was Mr. Lewis that Mr. Lukas highlighted.
11 Another one was Ms. Cooke. Ms. Tittensor actually admitted
12 to that, although she always would try to tack on "oh, and
13 to make the sale." To make the sale, like she had been
14 programmed during her meetings to prepare for her testimony.
15 Mr. Bazzi admitted to that, Mr. Lachowicz, Ms. Quinn. All
16 of these individuals admitted to their exempt duties and
17 that these were the job function that they had as a
18 Quicken Loans mortgage banker.

19 Now, there's an exception to the exemption, and that's
20 if the primary duty of the employee was found to be sales.
21 That's something different than those four items.

22 Will you put back up the four items.

23 So if it's sales, it's something different than these
24 four items, the four examples, and the question is what does
25 it mean to have your primary duty? Mr. Lukas referenced

1 there is an instruction. It will say your principal, main,
2 major, most important duty.

3 You will be instructed that what the plaintiffs'
4 primary duty was as a mortgage banker, you are to consider
5 all of the facts in their job as a whole. You will be
6 instructed that the amount of time spent performing exempt
7 duties can be a useful guide in determining whether exempt
8 work is the primary duty of an employee, and you can compare
9 that with the amount of time they spent on non-exempt
10 duties.

11 Here that's easy to decipher because we have an exhibit
12 that shows how much time they spent on the phone versus how
13 much time they contend they were working. So, using
14 Mr. Bazzi as an example, he claims he worked 72 hours a
15 week, and he spent 8 hours and 49 minutes on the phone. So
16 63 hours must have been something else. And the 8 hours and
17 49 minutes he was on the phone included his personal calls.

18 And it wasn't only the sales component. It also had
19 the educating the client, the gathering the information,
20 providing the recommendations and advice and explaining and
21 educating the client on the loan documentation.

22 What we also note from Exhibit D201, the last page,
23 what all of the plaintiffs, even these unknown bankers, how
24 much time did they spend on the phone on average? It was 14
25 hours and 44 minutes per week on average. 23.39 percent of

1 the time.

2 So what were they doing the rest of the time? What
3 were they doing? Mr. Nichols and Mr. Lukas says their
4 entire job was cold calling, telemarketing, dial, dial,
5 dial, dial, and then sell them when they are on the phone,
6 sell them, use the sales process.

7 Well, they are only on the phone 23.39 percent of the
8 time. So what are they doing the other 76 percent of the
9 time? What are they doing? That's what we have to ask
10 ourselves. What were they doing?

11 And when they are on the phone, this includes their
12 personal calls, their internal calls to their directors,
13 co-workers. This includes calls with processing. This
14 includes calls external to lawyers and realtors. What were
15 they doing the rest of the time, I ask you?

16 So in order to get around the administrative exemption,
17 the plaintiffs are claiming that their primary duties was
18 sales. That's the exception. That's what they came in here
19 and said, sales, sales, sales.

20 This is an insult to the overtime laws and what they
21 were meant to protect. Quicken Loans pays overtime to
22 employees that are meant to be protected like the frontline
23 agent. They work in financial services, but they do
24 prospecting and prescreening. That's their primary duty.
25 They don't do any advising. They don't do any consulting.

1 They don't do any analysis, no recommending, educating,
2 problem solving or troubleshooting, and they get overtime.
3 They refer those people to the mortgage bankers to do that,
4 to do the consulting and advising, analyzing, recommending,
5 educating, problem solving, troubleshooting. They are not
6 entitled to overtime, and even if they were entitled to
7 overtime what happened was Quicken Loans was developing a
8 compensation package that was better anyway.

9 The sales component here is the asking for the
10 business, asking for a commitment on a loan program.
11 Mr. Lukas made light of that, but that's what Ms. Lilly put
12 in her own resume in her own words. She put a second line
13 on there. That's what she admitted to in her own words,
14 utilize assumptive selling techniques to obtain client
15 commitment. That's the selling. That's the sales
16 component. Quicken Loans has never suggested there is not a
17 sales component, but it's just one part of the job that the
18 plaintiffs are trying to suggest is the entire job.

19 Now I would like to look at Exhibit -- put up Board 3
20 in terms of some other aspects of the job here.

21 This was a position that was a fiduciary position. It
22 was a position of trust and responsibility, special
23 governmental regulations and requirements. There was access
24 to and utilization of confidential, proprietary information.
25 This is right in all of the employment agreements. There

1 was a special nature to this job. It was not just a
2 telemarketer, like Mr. Lukas was trying to suggest.

3 So let's look at what the plaintiffs said their jobs
4 were. Now, we went through a few resumes, but there were
5 a lot more. For example, let's look at Exhibit D7. Can you
6 put that up?

7 Mr. Lewis, Mr. Emanuel Lewis testified, and I'll put up
8 a picture of him. He testified that he worked 50 hours on
9 average at Quicken Loans, and he admitted to his job
10 functions falling within the exempt duties in terms of the
11 nature of the duties and he also admitted to having
12 discretion and independent judgment. Now, the reason why he
13 admitted it was, unlike some of the other plaintiffs, he
14 wasn't going to lie.

15 Can you see the board?

16 **A JUROR:** No.

17 **MR. JEFFREY MORGANROTH:** So, Mr. Lewis, he
18 acknowledged that this was his resume and that he circulated
19 it. He put it in his own words. So what did he put?

20 Mortgage banker -- that's what he called
21 himself -- consulted with prospective clients
22 to complete a needs analysis to diagnose each
23 client's financial situation.

24 Nothing about sales.

25 And, by the way, he didn't come in here sales, sales,

1 sales quite like the other plaintiffs did.

2 Bullet Point 2, which is the next page, which are
3 interposed here, it says:

4 Presented clients with the benefits of
5 various mortgage options and rates.

6 Advised prospective clients on available
7 options in home loan financing while
8 addressing client concerns, gathering
9 documental information, and promoting loan
10 products and financial services.

11 That's what Mr. Lewis said he did in his own words, not
12 Quicken Loans' words, not in the documents that he signed
13 and acknowledged in the employment agreements, compensation
14 plan. His own words.

15 We saw what Ms. Lilly said.

16 How about Exhibit D48, Mr. Lachowicz, another
17 plaintiff. What did he say in his own words, other than
18 when he came into court and tried to say sales, sales,
19 sales?

20 Now, on cross-examination he admitted to this, and he
21 admitted he performed his job functions in accordance with
22 the job duties that were set forth in the employment
23 agreement. He readily admitted to that on
24 cross-examination.

25 But here is his resume. And what did he call himself?

1 Mortgage banker. And he put:

2 Personalized potential client's profile and
3 developed programs that managed financial
4 situations.

5 Exactly within the general instruction or the
6 two questions, question one, and it falls within the
7 four-prong example that was shown to you.

8 What else did he say? He said:

9 Assisted in continuous training for new
10 associates on sales techniques -- that was
11 part of his job -- and client protocol and
12 policy.

13 And then he talks about producing quality work. So
14 Mr. Lachowicz in his own words is doing exactly, well, it's
15 all four of the items from that exhibit, but it also falls
16 within question one, directly related to the general
17 business of Quicken Loans and its customers.

18 Let's look at another one, Ms. Quinn, Exhibit D97.
19 Ms. Quinn, another plaintiff. She put herself down, she
20 called herself a loan consultant. Again, these are her own
21 words. She said she would:

22 Prepare and implement strategies for clients
23 to achieve their financial goals and manage
24 their mortgage more effectively.

25 I don't see anything about sales in there. I don't see

1 sales, sales, sales or telemarketer cold calling. These are
2 the financial services that fit right within the
3 administrative exemption, her own words.

4 We have seen Ms. Little. Let's move to Ms. Cooke.

5 Ms. Cooke also had -- as another example, and maybe
6 we'll make this the last one because we are running out of
7 time here. What did Ms. Cooke put in her own words? This
8 is what she said she did. Ms. Cooke called herself a:

9 Mortgage banker/certified originator whom
10 speaks with clients regarding finances and
11 benefits. With this analysis, I can
12 construct a financial plan for qualification
13 for an array of products and programs.

14 That's precisely within the general instruction you
15 will look at, and it's also precisely within all four of the
16 specific examples. That's what she did. I don't see
17 anything about sales in there. I don't see anything about
18 telemarketer. I don't see anything about cold calling.

19 Now I would like to put up Exhibit D4. Let's, let's do
20 it with a board. This is from the mortgage banker's duties
21 document.

22 Now, the mortgage banker's duties document was
23 Exhibit D4, then we put in a whole bunch more that was
24 signed by every plaintiff that was working during this time
25 period, and this is just one section of the duties document.

1 There is much more that goes through in great detail the job
2 duties, the expectations and the policies.

3 But focusing on this one, this one document, let's look
4 at some of the bullet points here.

5 Our mortgage bankers use their training,
6 knowledge, sound discretion and good judgment
7 to put it all together for the client in
8 terms of collecting and analyzing the
9 relevant information from our client
10 concerning their financial status, credit
11 history, financial statements, income,
12 assets, investments, debts and properties,
13 including knowing how to take a clean and
14 well-documented loan application.

15 That fits exactly within item one of the four different
16 alternatives that qualify for the administrative exemption.

17 2. Understanding our client's objectives,
18 goals and needs in light of relevant life and
19 financial circumstances and characteristics
20 of the property involved through an in-depth
21 objective analysis.

22 Again, it falls right within the factors of the various
23 alternatives to qualify for the administrative exception.

24 Computing payments, rates, costs, break-even
25 points, payback periods, and then evaluating

1 and comparing the cost benefits and risks of
2 affordable alternative programs that meet our
3 client's needs.

4 Again, right within the examples of what would qualify for
5 the administrative exemption. Next one:

6 Qualifying our clients for the desired loan
7 programs and conducting a credit and
8 non-credit assessment of the proposed
9 transaction.

10 Again, right within the examples of the administrative
11 exemption. Next one:

12 Educating and advising our clients on
13 alternative programs that best meet the
14 client's objectives and explaining the terms
15 of such programs and assisting the client in
16 selecting an option that best suits their
17 needs.

18 The next one:

19 Presenting all of the above information to
20 our clients in a manner that's easy for our
21 clients to understand.

22 The next one:

23 Commencing the loan origination process by
24 initiating a loan application process and the
25 ordering of DOE's, DOD's, payoffs,

1 appraisals, inspections, surveys, title
2 commitment, flood certification, other
3 documents.

4 All of these fit exactly within the examples of what would
5 qualify for the administrative exemption and the general
6 language as well.

7 Let's see the next board.

8 Educating and advising our clients with
9 respect to resolving and improving their
10 credit situation, the significance of credit-
11 and risk-based pricing in today's mortgage
12 banking market and improving their credit
13 profile so as to take advantage of more
14 favorable loan opportunities now or in the
15 future and educating and advising our clients
16 in the entire financing process and to make
17 sure our clients understand the significant
18 risks, benefits, advantages, disadvantages
19 and outcome of the alternative loan programs
20 considered.

21 And they are supposed to:

22 Use their training, knowledge and judgment to
23 lock interest rates, to price loans
24 competitively and in such a manner as to
25 achieve our clients' objectives and goals.

1 And that's to benefit the company, the client and the banker
2 himself or herself.

3 All of these fit exactly within the examples of the
4 administrative exemption that you will be given and
5 instructed on by Judge Murphy and as well as the general
6 instruction.

7 Now, I would like to look very quickly at the
8 compensation plan that also has the duties reference, and
9 that would be Board 7, if you can put that up.

10 This is Exhibit D41, Mr. Lachowicz's, and there was a
11 listing in the compensation plan, too, of the job duties.
12 And we are not going to go through every line, but:

13 Interview loan applicants to determine their
14 needs and goals, analyze potential loan
15 applicant's financial situation, [this
16 one says] marketing and promoting the
17 company's loan products and services.

18 Those first three fit exactly within the top
19 three examples that were in the instruction, and all of
20 those in and of themselves would qualify the mortgage banker
21 for the exemption, but we have all of them, not just one.

22 And then it has:

23 A thorough understanding of the company's
24 mortgage loan programs.

25 Let's see the next board.

1 Work with the loan applicants to complete the
2 loan application process and collect the
3 necessary documentation, advise them on the
4 home-buying mortgage loan process.

5 That fits specifically within that general instruction in
6 terms of directly relating them to the company business
7 operations.

8 And so do the rest of these, and if you want to look at
9 Exhibit D41, each one of them falls within the exempt duties
10 examples and you only need one.

11 Now, besides documents, we have heard from some live
12 witnesses that explained in very careful, detailed testimony
13 as to the nature of their job.

14 We heard from Ms. Booza. Ms. Booza came in here and
15 she described precisely what she did as a mortgage banker
16 step by step:

17 What information she would gather and how she performed
18 her analysis, in processing her duties.

19 Her process of calculating the ratios.

20 How she determined which loan programs to select and
21 recommend.

22 How she determined whether the client would qualify.

23 How she examined and evaluated the various loan
24 options.

25 How she would make recommendations to her clients,

1 either float or lock interest rates or pay points to buy
2 down the interest rate.

3 How she asked for the business. She testified that
4 that was a very short part of what she would be doing on any
5 phone call.

6 What loan documentation she processed and how she
7 managed the entire process through closing and how she would
8 investigate, problem-solve and troubleshoot.

9 Now, she described what she would do when she wasn't on
10 the phone. And what were those types of things?

11 Certification courses, licensing exams, managing her
12 pipeline, keeping abreast of market conditions, and that
13 analysis, the processing, the evaluation so that she can
14 match up loan programs that met the clients' needs and that
15 they could qualify for. That was all done off the phone.

16 Mr. Thompson then, if you recall him, he came in, he
17 was the second witness we called, and he took everyone
18 through an example. He had gone through his closed loan
19 files, and one typical example he called Mr. B.

20 If you remember Mr. B, he had a goal of consolidating
21 debt, and Mr. Thompson wanted to avoid PMI and to come up
22 with a spreadsheet so he could pay off his debt, Mr. B. So
23 Mr. Thompson, when he got off the phone, developed a
24 program, analyzed the information, the program was developed
25 so there would be a snowball effect that would help him pay

1 off debt. Remember, Mr. Thompson explained what a snowball
2 effect was. Initially Mr. Thompson said he could save the
3 client 600 a month, but when the appraisal came back, it was
4 higher, and the client wanted to take more money out so he
5 could pay off more debt at that time and have a bigger
6 snowball effect, which is what took place, so even more
7 money was saved.

8 Mr. Thompson also took us through some examples of what
9 he would do in terms of the loan process when loans were in
10 his pipeline. He said problems would arise, and he gave an
11 example.

12 Mrs. T was one example. The appraisal came in too low.
13 There were problems with the loan to value in that
14 particular case. He investigated. He found discrepancies
15 and errors in the appraisal report. He then helped put
16 together a value challenge. He also testified there were
17 problems with the flood certification insurance deductible,
18 and he helped solve that problem due to his own discretion
19 and independent judgment to get a waiver, which occurred.

20 Mr. Baumann, he took us all through an example, too.
21 His example of what he typically did was Mr. B.G. There was
22 a father and a son who were repeat clients. Mr. Baumann
23 became a mortgage banker for the family. Their youngest son
24 was referred, who had a toxic loan. He had a high interest,
25 very high, couple-digit interest rate with 100 percent loan

1 to value from a builder on a new construction.

2 So Mr. Baumann asked a lot of probing questions. He
3 came up with a lot of information and then analyzed it. He
4 said it was like doing algebra. And he came up with a split
5 loan option, and the split loan option was to avoid PMI, and
6 he would also -- ultimately ran into a problem. The client
7 was not going to be able to qualify. So he had to educate
8 and come up with a solution and educate Mr. B.G. and his
9 fiance, and that was to add the fiance to the loan, who had
10 better credit, and then she would have to be added to the
11 title of the property. Mr. Baumann had to go through all of
12 the analysis of the fiances also to see if it would work,
13 and it did.

14 Mr. Baumann also testified that what he did was the
15 first part of the split loan was a 30-year fixed, and the
16 way he came up with that was because Mr. B.G. had indicated
17 he had a five-year plan, and in answer to those questions,
18 he was going to get married, he had a fiance, have kids,
19 move out of that house and then sell the house -- not sell
20 the house, hold it as an investment property. But if he
21 were to refinance when it was an investment property, it
22 would be a higher interest rate because of the nature of the
23 house. So lock in now for 30 years, and you won't have that
24 problem in the future.

25 In addition, Mr. Baumann had to come up with a creative

1 solution of how Mr. B.G. could come to the closing with some
2 funds to pay the differential, and Mr. Baumann did that.

3 We heard from Mr. Ortman, Mr. You, Mr. Bettis. We
4 heard from Mr. Farner, Mr. Birkmeier, Mr. Emerson,
5 Mr. Gilbert and others all about the loan officer/mortgage
6 banker's job duties. They all fit within the exemption.
7 Their primary duty was not sales. It was a component,
8 absolutely. Did they get training on sales techniques?
9 Yes. Did they get training on other things? Absolutely.

10 We saw the indexing. Mr. Lukas was criticizing us
11 because we didn't bring a trainer in. Why would we need to
12 bring a trainer in? I didn't understand. He appeared to be
13 complaining that the trial seemed to be too long, but why
14 would we have to bring a trainer in when every plaintiff
15 admitted on cross-examination that the extent of this four-
16 to five-week training program was extensive and
17 comprehensive. It covered the entire mortgage loan process
18 and business. It wasn't about only sales techniques or
19 tips.

20 Why would we have to bring a trainer in when we had an
21 exhibit of the index that showed there was one category that
22 was sales? Everything else was about loan ratios and about
23 the mortgage business, about loan to value and about terms
24 and about how to analyze and about information on the
25 market.

1 We even saw test scores. We saw the tests that were
2 taken by Ms. Little. There was very little, if anything, in
3 there about sales. And we also saw the tests that Mr. Henry
4 took. Why would we bring in a trainer on top of all of that
5 when it's undisputed other than what Mr. Lukas is
6 suggesting?

7 We also saw that there was follow-along training. We
8 used the same type of exhibit to show that there was
9 training throughout, and we heard from various witnesses
10 throughout that there was follow-along training on how to
11 analyze, how to educate, how to evaluate various loan
12 programs and needs and the information in terms of income,
13 assets, debts.

14 There were courses that were taken to get
15 certifications. Let me show you two of these thick
16 exhibits, Exhibit D203 and D204. Mr. Emerson testified that
17 these are just two of the certification courses. This was
18 Florida and Oregon.

19 And the plaintiffs were mortgage bankers, and
20 Quicken Loans was doing business in all 50 states. They
21 were to become certified. If we brought in all of those
22 documents, Mr. Emerson said it would be 25 boxes.

23 And he looked through these. There was nothing about
24 sales in here. Actually, there was one thing about sales.
25 It was about reselling mortgages on a secondary market,

1 which is not what the mortgage bankers were doing. That's
2 Bill Banfield and his department, secondary marketing.

3 So Mr. Lukas then, he had to take a position that
4 everything was sales, everything they did was related to
5 sales. Well, that doesn't make any sense. That means that
6 everything that I do as a trial lawyer would relate to
7 getting a client or a retainer.

8 That means that everything Bill Banfield did in capital
9 markets would be sales because they developed the loan
10 programs and established pricing and provided information to
11 the mortgage bankers.

12 That means that the operations and processing, they
13 would be sales because everything they do is to prepare loan
14 documentation and process the closing.

15 That means Mr. Farner, everything he does as the head
16 of the web center would be sales. Because if the web center
17 only does sales, then everything he does must be related to
18 sales even though he doesn't even communicate with clients.

19 Mr. Lukas' position is not consistent with the facts or
20 the law. It's an insult to those workers who are really
21 entitled to overtime. According to the law, the types of
22 things the mortgage bankers were doing falls specifically in
23 the exempt financial services duties, and it also ignores
24 the testimony that there's not even a sales component in
25 certain situations.

1 There are repeat clients. There is no sales component
2 on a repeat client. Mr. Baumann testified to that.

3 Ms. Booza testified to that.

4 Referral clients, there is no sales component for most
5 of those. Mr. Baumann testified to that again, Ms. Booza.

6 And then we heard about taking over loans that were
7 already in process. There's no sales component when you are
8 taking over a loan that's in process. Ms. Lilly testified
9 that she did that and so did Mr. Baumann. It was regular.
10 You would take over a loan from a different mortgage banker
11 and manage the process through closing, but there's no sales
12 component there.

13 Well, the plaintiffs' entire case is based on a single
14 word that they have, sales, and it's really -- the heart and
15 soul of their case is these emails. None of the plaintiffs
16 received any of the emails, but they are focusing in on the
17 emails and that's what Mr. Lukas focused in on primarily
18 during his closing.

19 The emails fall within a few categories. One is, yes,
20 there are sales techniques and sales tips that fell within
21 those emails. But that doesn't matter. We acknowledge
22 there was a sales component.

23 There are other emails where they are isolated events,
24 such as, if you recall, there was a Jay Farner email that
25 talked about the blackout when there was an electrical

1 backout in the whole power grid from the east coast. So
2 they had what was called a "saleabration" blackout because
3 Quicken Loans had been down for several days because they
4 had no electricity. Well, the plaintiffs were trying to use
5 that, aha, your job was sales, sales, sales, sales. Well,
6 that was an isolated, special situation.

7 And then there is also emails that deal with generic
8 references and expressions. In terms of the generic
9 references and expressions, there was an explanation as to
10 how that derived. Back in the 1980's, the 1990's early,
11 there was a different model. The model evolved. We then
12 heard -- originally it was pound the pavement, get your own
13 leads. There was no separate marketing division, no
14 frontline agents. And then it evolved to Mortgage In a Box,
15 then it evolved into online web center, but in that process
16 there was developed a separate marketing division that spent
17 millions of dollars getting prospective clients, and then
18 there was a separate frontline agent, who would prescreen a
19 prospect, and only then interested clients in pursuing loans
20 with Quicken Loans would be provided to the mortgage
21 bankers, who then would provide their analysis, advice,
22 consultation, recommendation, problem-solving and all of
23 that.

24 In terms of this generic reference, listen, if we went
25 back to our emails and looked at our text messages or emails

1 going back eight, ten years like that, I'm sure that we
2 would find in all of our emails some things that could be
3 twisted and taken out of context, some things that might
4 have foul or harsh language, some things that might have a
5 sensitive tone.

6 But that doesn't mean that what the Quicken Loans
7 mortgage bankers were doing was sales. You have to look at
8 their job as a whole, what they actually were doing, not
9 what Mr. Lukas and his team are suggesting that these emails
10 mean.

11 And addressing the emails, the small number of emails
12 compared to what the testimony was as far as how many emails
13 there were. There were millions of emails testified to by
14 Mr. Emerson, by Mr. Farner, Mr. Gilbert and others.

15 And Mr. Lukas says, where are all of those emails?
16 Well, they want us to bring in a truckload here? It would
17 cover this whole courtroom. They want us to go through all
18 of these emails to show all of these different topics and
19 processing and about the market and keeping abreast of
20 market conditions and procedures and administrative issues
21 and questions regarding problem solving and qualification
22 issues and pipeline issues? We saw some of those, we
23 absolutely did, and Bill Banfield testified there were a
24 whole host of them just from his department alone.

25 It is undisputed, no one ever disputed, no one rebutted

1 that there were this volume of emails. It was testified
2 point blank that they exist. No one came in and said, no,
3 they don't. No one came in and said, no, these are all of
4 the emails. We are going to bring in all of the emails,
5 millions of them, into this courtroom to try to prove
6 something that's undisputed? I don't think so.

7 Mr. Lukas made a big deal about the sales process.
8 This was not a script to be used verbatim, and not even the
9 sales process was primarily about sales, only a small
10 portion of it dealt with the sales component.

11 Mr. Baumann testified he never even used it. His sales
12 process was a pen and a piece of paper.

13 Mr. Pellow, who was plaintiffs' witness, he testified
14 that he never used it.

15 Mr. Lukas made a big deal about the three-strike
16 policy, but no one ever heard of it except for Ms. Lacey,
17 who said she heard of it two years before there was ever a
18 voice mail.

19 I just want to move on now to discretion and
20 independent judgment. In terms of discretion and
21 independent judgment, you will be told that that means
22 essentially being able to make judgment calls, being able to
23 choose from different possibilities or being able to make
24 decisions or recommendations.

25 Now, you will be instructed that if the employee has

1 the authority to commit the employer in matters that have
2 financial impact on the business, that's discretion and
3 independent judgment, and we know that that occurred here
4 because we heard Mr. Banfield confirm that the mortgage
5 bankers had the authority and the discretion and that
6 Quicken Loans was relying upon them to lock or float
7 interest rates and Mr. Banfield talked about the significant
8 financial impact on Quicken Loans in terms of relying upon
9 that.

10 If the employee can bind the company in significant
11 matters, then that also is independent judgment and
12 discretion. We know that that occurred. We heard so much
13 testimony about that, what the mortgage banker would bind in
14 terms of making recommendations and matching up loan
15 programs that would fit the client's goals,
16 prequalification, problem solving, recommendations on
17 locking and floating, plus whether to pay points or buy down
18 interest rates, the solutions that the mortgage bankers came
19 up with. The testimony in this case is very, very strong,
20 and there's no one that could outright deny that they had no
21 discretion especially in their analysis in terms of the
22 income, assets, debts, credits of the property and personal
23 life circumstances.

24 The pricing alone, we heard about premiums, green bar.
25 It's undisputed that the mortgage banker had discretion

1 whether to charge more or not charge more or credit it back.
2 We incidentally also heard from Mr. Emerson that there was
3 not really a green bar overall with the company, there was
4 really a shortage, a red bar way more often than the green
5 bar, but overall there was a shortage.

6 In terms of discretion and independent judgment, we
7 heard from Mr. Baumann how he came up with a solution as far
8 as the \$5,000.

9 We heard from Mr. Thompson, who testified he sent out a
10 spreadsheet and came up with a plan for a client to follow
11 in terms of paying off debt. That was something he
12 developed on his own. That was something that he was
13 providing to a client to rely upon.

14 Ms. Tittensor, she admitted that locking or floating
15 interest rates, she had the authority and discretion to bind
16 the company.

17 Ms. Lytle Lacy, she admitted that the mortgage banker
18 had actual discretion to credit the client in terms of a
19 premium or not to charge one at all.

20 These are just some examples. Ms. Maull, Exhibit D12,
21 if you look at that, there's a series of emails, and in that
22 series of emails you can tell that she had discretion as
23 well as performing financial services, exempt duties.

24 Mr. Lewis, Ms. Cooke, they both acknowledged that they
25 had discretion in terms of matters of significance.

1 And Mr. Banfield's testimony is a perfect example that
2 confirmed that administrative exemption in its entirety. He
3 went through the product matrix. He went through all of the
4 examples -- that product matrix was very complicated. It's
5 D186. He went through all of the things that the mortgage
6 bankers needed to know and the reason why they needed to
7 know, the type of information they had to gather, the type
8 of information they needed to know in terms of the market,
9 the type of information that they needed to educate the
10 client.

11 There was Exhibit D187, which was the Rock Street
12 Journal, and how to price, price loans. He went through and
13 explained what Quicken Loans was relying upon mortgage
14 bankers for, to understand the loan programs, understand the
15 qualification guidelines, the market conditions, so that
16 they could decide what information must be gathered so that
17 they could analyze the information so that they could make
18 recommendations as to whether to lock or float, so that they
19 could make recommendations as to whether to buy down
20 interest rates, so that they could make recommendations as
21 to what interest rate would make the most sense and how they
22 could price the loan and how to problem-solve and
23 troubleshoot.

24 I'm running out of time, so I think I just want to run
25 through the verdict form and then call it a day.

1 So if you can put the verdict form up. And I know you
2 have seen the verdict form from Mr. Lukas. I'll just put
3 this down.

4 So we have a little different viewpoint on the verdict
5 form. So, question one, the administrative exemption:

6 Was plaintiffs' primary job duty the
7 performance of office or non-manual work
8 directly related to the management or general
9 business operations of Quicken Loans or its
10 customers?

11 We want you to check the box yes because that's what we
12 would hope that you would check. I think the evidence shows
13 that. It fits specifically within the general instructions,
14 which is this, as well as the examples. Only one example we
15 need, not all four, but we have all four.

16 Did the plaintiffs' primary job duty include
17 the exercise of discretion and independent
18 judgment with respect to matters of
19 significance?

20 Yes. That's relating to the financial impact on locking and
21 floating, recommending loans, telling clients that they are
22 qualified for those loans in terms of the analysis,
23 problem-solving, paying down interest rates by buying
24 points.

25 Now, that ends the case. That would be it. So if you

1 check yes, yes, we're done.

2 And if you don't agree and you check either one of
3 those no's, then you have to go on and answer some further
4 questions. But if you check yes, yes, that's the end of the
5 story, the case is over, we're done, and there's nothing
6 further to do on this verdict form.

7 So if you do check a no, then you've got to go to
8 Question 2, hours worked by testifying plaintiffs. It says:

9 Please determine the average number of
10 overtime hours worked per week during the
11 plaintiffs' employment as a mortgage banker
12 with Quicken Loans.

13 And this is any hours over 40 hours a week.

14 So what we would ask if you do get to that, you need to
15 take into consideration that there was a fluctuating
16 workweek, that not all of the plaintiffs worked more than
17 40 hours every week, that there were personal time, breaks,
18 some plaintiffs came in late, some left early, that there
19 were vacations, Quicken Loans sent some of the plaintiffs on
20 trips and paid for it, that there were the fun-time
21 activities that the individuals were taking advantage of on
22 work, during work hours and personal calls and surfing the
23 net. That the plaintiffs acknowledged, at least most of
24 them, that they didn't work overtime in excess of 40 hours
25 during their training and that there were certain weeks that

1 they couldn't possibly work overtime because they worked
2 less than three days.

3 And the first thing that you would look at is in terms
4 of per week. Let's go to the next page. We do this on
5 a plaintiff-by-plaintiff basis. So these are the
6 25 plaintiffs that came in, and there would be a separate
7 line for each one in terms of how many hours you would think
8 that they worked in excess of 40 and how many weeks, and we
9 would say that the weeks can't be the full number of weeks
10 they worked because no one worked overtime every single week
11 they were there.

12 So let's go to the next page, and these are the hours
13 worked by the non-testifying employees. That's the unknown
14 mortgage bankers, the ones we didn't hear from, we didn't
15 see from, see of, and also there was no evidence presented
16 as to their hours or weeks. The only thing in terms of
17 weeks that's presented is Exhibit D202 that references how
18 many weeks they were employed but not how many of those
19 weeks they actually worked overtime.

20 So here you will be getting instruction on
21 representation, whether -- first you have to determine if
22 they are fairly representative, the 25 testifying plaintiffs
23 of the non-testifying plaintiffs. And if you think they are
24 fairly representative -- and we would suggest there should
25 be a zero in here so put a zero because we know who the

1 25 plaintiffs are, that's these people, and they either
2 admitted that they had exempt duties for their primary
3 duties and admitted to discretion or they are people that
4 just can't, can't be believed.

5 I don't know how you could believe a Mr. Semilia, who
6 not only lied to you and to us but lied to two different
7 states and lied to Quicken Loans regarding something very
8 important in terms of his employment, and that's why he was
9 fired.

10 But if you find that the 25 plaintiffs who testified
11 were not fairly represented -- now, I'm not talking about
12 the work they performed. I'm talking about their hours.
13 Somehow you have got to figure out how many hours, and the
14 testimony is that no one kept track because everyone
15 understood that the mortgage bankers were exempt. They
16 weren't hourly. They were getting paid by a guaranteed
17 salary plus commission. There was no reason to keep hours.
18 No one kept track of that.

19 And Quicken Loans couldn't reconstruct the swipe cards.
20 People would piggyback in and not swipe. You didn't have to
21 swipe to get out.

22 People would log in and then leave their computer on
23 and not log out, so it was impossible to reconstruct. So if
24 we could have reconstructed, we would have, but we couldn't.

25 So you have to figure out, how about these

1 non-testifying plaintiffs? There is no evidence that came
2 in, no one has a clue, no idea as to what hours they worked.

3 And the hours that the plaintiffs testified was all
4 over the board. We have Mr. Lewis, who testified 50 hours,
5 but he didn't take out his personal time and vacation time.
6 Then we have Mr. Kadro on the other end of the spectrum
7 saying 70, 75, 80. So which is it for these plaintiffs?

8 What number would you give for the non-testifying
9 plaintiffs? Well, so if they are not fairly representative
10 because there's a broad spectrum and no one has given any
11 indication they had a clue of what these non-testifying
12 plaintiffs had worked, the amount of hours, and no
13 one provided any evidence of that, then the answer still has
14 to be zero because there is not sufficient evidence to make
15 a determination, and that's that last paragraph here.

16 So here's, in summing up, here is where we are at. You
17 are the judges of the facts. You make the credibility
18 decisions. You decide what's right, what's wrong.

19 Quicken Loans has been fighting this because it's about
20 right versus wrong, and they designed intentionally a
21 compensation package that was better for mortgage bankers
22 when they had the understanding that they were exempt, and
23 they were up front about this and they fully disclosed it
24 and not one plaintiff ever came through and complained or
25 objected and said that they didn't want to be paid this way.

1 Not one plaintiff has offered to pay back any of the
2 commissions or guaranteed salary or to have their
3 compensation recalculated.

4 So here is where we are left, and if we can put up
5 Ms. Lacey. Ms. Lacey was a plaintiff, and this works for
6 all of the plaintiffs, Ms. Lytle Lacey, and if you put her
7 up, it's either check -- and if you can put the first page
8 back -- check yes, yes or Ms. Lacey would be awarded
9 \$102,083 versus \$30,917 that she would have received had she
10 received overtime plus a salary to begin with. That's what
11 we are left with, and are you going to give Ms. Lacey
12 overtime on top of her guaranteed salary and commission?

13 Are you going to give Ms. Lacey overtime for hours that
14 she spent on the phone talking to her boyfriend?

15 Are you going to give Ms. Lacey overtime when she was
16 sent on a vacation and paid for by Quicken Loans three
17 different times?

18 Are you going give Ms. Lacey overtime on
19 non-work-related activities, surfing the net or
20 participating in fun activities?

21 That's the question here, and it's your decision. So
22 we would ask that you check the boxes yes, yes, and that we
23 end it there.

24 I will not get another chance to speak with you.
25 Mr. Lukas gets one final chance of 10, 15 minutes. That's

1 because they have the burden of proof. Overall, they have
2 to prove hours. They have to prove weeks. What we have to
3 prove is the administrative exemption. It's our burden of
4 proof by a preponderance of the evidence, tipping the scales
5 ever so slightly, and I suggest that we have proved that
6 yes, yes.

7 But Mr. Lukas is going to get back up here and I won't
8 get a chance to respond, but I think you probably can
9 imagine and will know what I would have said in response.
10 And what I would like you to keep in mind are the exhibits
11 and the testimony that we have gone through and what's right
12 and what's wrong here, and keep that in mind throughout
13 whatever Mr. Lukas is going to suggest in the next 10,
14 15 minutes.

15 And I thank you for all of your time and your
16 attention. I apologize that this has taken so long on the
17 closing arguments, but this is an important case to
18 everyone, especially Quicken Loans, because they have been
19 involved in this for -- in order to determine what's right
20 and wrong, and this is a situation where they think that
21 they have been extremely fair and generous to the plaintiffs
22 and all of their mortgage bankers and it's them that are
23 being taken advantage of here. Thank you very much.

24 **THE COURT:** Okay. Thank you very much,
25 Mr. Morganroth.

1 Ladies and gentlemen, it's time for a bathroom break at
2 3:55. We will return for a brief rebuttal from the
3 plaintiffs, instructions from the Court, and then we are
4 going to call it a day and send you home and get you to
5 start deliberating tomorrow morning, okay?

6 Let's all rise for the jury, please.

7 (Jury out at 3:58 p.m.)

8 **THE COURT:** Okay. You may all be seated.

9 Mr. Lukas, I had you at 2 hours and 15, I had
10 Mr. Morganroth at 2 hours and 35, so I will give you
11 20 minutes for your rebuttal and urge you to stay well,
12 well, well under that. All right?

13 **MR. LUKAS:** Sure, Judge.

14 **THE COURT:** All right. Now, anyone who doesn't
15 intend to stick around for the charge to the jury I would
16 recommend this would be a good time for you to exit. We
17 don't want any mass exodus after Mr. Lukas stops talking
18 because we want to be respectful of our jurors and convey
19 the message that the instructions and their charge in the
20 case is just as important as the attorney's work. So let me
21 make that suggestion.

22 We'll take a five-minute recess, and we'll see you in a
23 bit. We're in recess.

24 (Recess from 3:59 p.m. to 4:08 p.m.)

25 **THE CLERK:** Please rise. Court is in session.

1 **THE COURT:** Thank you, Carol. The jurors are
2 chomping at the bit.

3 (Jury in at 4:08 p.m.)

4 **THE COURT:** Okay. Let's all rise. Come on in,
5 folks. I know that was a quick one, but it kept us on
6 schedule.

7 Okay. Our jurors are all here, they are in their
8 places, and you may be seated.

9 As I mentioned -- I think I mentioned before we broke,
10 I hope I did, we are going to hear from Mr. Lukas one final
11 time, and then I'm going to go straight into your
12 instructions and then we are going to break for the day,
13 okay?

14 All right. Mr. Lukas, the floor is yours.

15 **MR. LUKAS:** Thank you, Judge.

16 It's been a long day. I'll try to be brief as best as
17 a lawyer can be. That's one of the worst things you want to
18 hear a lawyer say is just a few more things, but just a few
19 more things.

20 Mr. Morganroth asked a series of repeated questions as
21 kind of part of his theme to his closing. One I heard was
22 what is this lawsuit about, and he suggested three things:
23 The lawsuit is about plaintiffs thinking they were somehow
24 cheated. It's about right versus wrong. It's about whether
25 they would have been paid more under some mythical pay plan.

1 No, actually this lawsuit is about whether Quicken
2 violated federal overtime law. That's it. That's what this
3 lawsuit is about, if you want to figure out what this
4 lawsuit is about.

5 You would be confused by defendants' closing and the
6 way they tried this case what the lawsuit was about, and I
7 counted 1 hour and 55 minutes before they started to talk
8 about why they didn't violate the law or at least made an
9 argument about the law. 1 hour and 55 minutes. I have got
10 an hour and 35 minutes of pounding on the plaintiffs,
11 exactly like I told you they would do, and 20 minutes of how
12 they would have been paid -- how their witnesses would have
13 been paid under a mythical pay plan. They pull out one
14 plaintiff, Kelly Lacey, because she happens to be one that
15 made 80 grand. As we know from Mr. Farner's testimony, he
16 said it was about right that this group of plaintiffs, the
17 300-plus, made about 40 grand on average.

18 So what would have done. And plaintiffs think they
19 were somehow cheated. That's one of their things they think
20 the lawsuit was about. Yeah, they do. They think Quicken
21 didn't follow the law, period.

22 Right versus wrong? It's the law that determines
23 what's right versus wrong, you and the judge, not
24 Quicken Loans. Quicken Loans doesn't get to say we have a
25 better pay plan, we did it better or these people don't

1 deserve it. There is no overtime law about do people
2 deserve it or not, were they good enough employees, were
3 they nice people, were their resumes perfect, were they
4 perfect people. Do you only get overtime if you are
5 perfect? No.

6 Sales. Job duties and hours, job duties and hours. An
7 hour and 55 minutes before we got to that, and that's the
8 way the whole case has gone and that's the way the whole
9 litigation has gone.

10 What do plaintiffs want? That's another repeated
11 question he asked. What do plaintiffs want? They want
12 Quicken to follow the law, period.

13 Another one. What are you going to do? Are you going
14 to give them overtime? What are you going to do? I would
15 hope you are going to follow the law as the judge gives it
16 to you. I know you are going to follow the law. That's
17 what you are going to do, and you are going to ignore the
18 sideshows.

19 The plaintiffs, do they deserve it? You will know when
20 you hear the law, and you have the facts, then you will know
21 whether they deserve it. They deserve it if Quicken
22 violated the law. They deserve it if the law says they
23 deserve it.

24 Also, in connection with that board and all of that,
25 there was about 13 people missing from it. If you count the

1 ones that just had personal phone calls -- you are going to
2 get a jury instruction on the 20-minute break rule. Why are
3 we still talking about personal phone calls and surfing the
4 net?

5 And the 12 that are up there, I'm not going to go back
6 and defend those, but I would like you to remember
7 something. When a lawyer asks a question, that doesn't make
8 it a fact.

9 Where was Jeff Perry's testimony about why Mr. Semilia
10 was fired? Mr. Semilia said he didn't remember them saying
11 anything about fraud. Mr. Perry, where was Mr. Perry saying
12 he was fired for fraud? It wasn't in his termination letter
13 that he was fired for fraud. Do you think Quicken would be
14 shy about that? No.

15 Mr. Pellow. I'm glad that he went through Mr. Pellow.
16 Somehow Mr. Pellow became our person in this lawsuit.
17 Mr. Pellow is their, one of their stars, who was born and
18 raised in the company under Mr. Perry. Mr. Perry created
19 Mr. Pellow. Mr. Perry bragged about how awesome Mr. Pellow
20 was. Jay Farner asked Mr. Pellow for advice on how he did
21 it so that he could incorporate his sales techniques into
22 the sales process, if you remember all of that testimony a
23 month ago.

24 So who is Mr. Pellow? Mr. Pellow, if he hadn't stole
25 from Quicken, would still be selling like crazy at Quicken,

1 but he stole from Quicken so off he goes. Selling those
2 fools? That gets you promoted four times.

3 Representative. I want to go through this because this
4 is very important, the law on representative. We are not
5 asking you for some bizarre thing. The law allows employees
6 to pursue their overtime claims as a group. The law doesn't
7 demand we march 325 people in so that Quicken can put them
8 on the board and do that 325 times. There's no new defenses
9 for the people that weren't here, and you would hear the
10 same thing.

11 A broad range of hours? Hardly. Pretty consistent
12 really when you think about it, but if everyone had come in
13 here and said 62.5 hours, you guys would have freaked. You
14 want to talk about, you want to talk about incredible
15 testimony. That would have been incredible testimony.

16 But the problem is they don't have records. See,
17 that's the problem. That's why the law says you can make a
18 just and reasonable inference, and it can be approximate and
19 it can be average and it can be the best that you can do.

20 That's why the law is that way, so that the employers
21 can't do what they have done in here and go, oh, jeez, you
22 have never met these 300 people that we would have crucified
23 if they had been here. That's not how the law goes. Here
24 is how the law goes.

25 The testifying plaintiffs can only represent

1 the non-testifying plaintiffs if both groups
2 performed substantially similar work. In
3 considering whether the work the testifying
4 and non-testifying plaintiffs performed was
5 substantially similar, you may take into
6 consideration --

7 And look at that list. It's identical for everybody,
8 testifying and non-testifying. Not only is it identical
9 based on plaintiffs' testimony, it's identical based on
10 every defendants' testimony. They have all admitted it's
11 the same job duties, the same employer expectations,
12 motivations, suggested work hours, familiarity with the
13 employees' work hours, comp, firsthand knowledge of the loan
14 consultant position, time period that each plaintiff worked,
15 teams and supervisors each plaintiff worked for, clients
16 each plaintiff served.

17 It's not substantially similar. It's identical of
18 these supposed missing question marks. We know what these
19 people were doing, we know how they were supervised, and we
20 know what it was like on the ground.

21 Here is some more of the law on collective actions and
22 representative testimony the judge is going to give you in a
23 few minutes.

24 The plaintiffs are not required to have a
25 specific number of employees give testimony.

1 The quality of the sample rather than the
2 quantity is the overriding importance.

3 Do you feel that you heard enough to get the joke? Of
4 course you did.

5 Here is the second one. This is very important because
6 they keep saying -- well, let me tell you what it says
7 first.

8 Also, the testifying plaintiffs do not need
9 to have personal knowledge of the hours the
10 non-testifying plaintiffs worked, although
11 you may consider their lack of personal
12 knowledge in evaluating the credibility and
13 weight of their testimony.

14 You do not need to have personal knowledge. So the
15 25 testifying people don't have to come in here and go, oh,
16 yeah, I knew all of the other 300. They don't have to say
17 they knew one of them. You saw our chart who we brought in,
18 and you think Jay Farnier or Dan Gilbert or Bill Emerson or
19 Jeff Perry or Tim Birkmeier or Brian Apple or any of these,
20 Victor You, do you think any of these people treated any of
21 these people any differently the way they managed? Do you
22 think there was some group out there that was the advising
23 and consulting group? No, there wasn't.

24 I also wanted to talk to you about this regulation.
25 When they finally did get around to talking about the law, I

1 think he said it wrong. He said, oh, they only have to show
2 one of the things in the white and that can't be sales. Who
3 said? All of those things in the white could be things you
4 do to sell. The things you do to sell, good salespeople do
5 the things in the white. It says:

6 However, an employee whose primary duty is
7 selling financial products does not qualify.

8 Just because some things up there could be exempt or could
9 be part of a sales job, all salespeople do these things in
10 the white, that doesn't make them non-sales for purposes of
11 this lawsuit. It says however. It's the sales piece that
12 overrides and can consume that. They could do all of those
13 things perfectly, and it's still sales. It's not exclusive.

14 The mortgage banker's duties statement, boy, and the
15 comp plan. Put it back up in front of you again and try to
16 pretend like the lawyers didn't draft it after the lawsuit.
17 All that proves is that the lawyers can keep their job. In
18 fact, he even said a few times it falls right into the
19 factors of what qualifies for administrative exemption.
20 They fit exactly, some of them. Well, I would sure hope so.
21 It's drafted by lawyers after the lawsuit. I would think
22 they would be smart enough to pull out this reg and copy it.
23 They literally copied it into the comp plan and into the
24 mortgage banker's duty statement after the lawsuit.
25 Literally copied it.

1 But what were they saying before the lawsuit? We
2 showed you that, and we know what they were saying before
3 the lawsuit: Sell, sell, sell.

4 And the sell, sell, sell, that kills me. Plaintiffs'
5 mantra: Sell, sell, sell? Is that what I heard him say?
6 It's plaintiffs' mantra: Sell, sell, sell.

7 It's not plaintiffs' mantra. Plaintiff doesn't decide
8 who we hire and how we hire them or who we train and how we
9 train them or how you motivate them or monitor them or judge
10 them or pay them. They did all of those things, and they
11 did all of those things based on sales, not on who was a
12 good financial adviser and consultant.

13 When you are hiring a financial adviser and a
14 consultant, don't you think the person would have some
15 financial background or at least education, a little bit?
16 No, they are looking for salespeople. Why? Because that's
17 the most important part of the job.

18 Real life. That's what the emails show. That's what
19 the voice mails show. That's what the call clips show.
20 That's what the training documents show. That's what all of
21 these documents that we have shown you show. They show you
22 real life. The voice mails, those are real. The call
23 clips, those are real. Standing at this thing and putting a
24 document that a lawyer drafted, that's not real, and every
25 time, the whole trial every time they wanted to tell you

1 what the job was about, they scurried over to the Elmo and
2 put something a lawyer drafted up and said aha.

3 And they avoided that Exhibit 21 like it was the
4 plague.

5 Think about their case and what they did. They
6 marched -- over and over and over again marched through
7 lawyer-drafted documents. Well, congratulations to those
8 lawyers. They know how to read a reg and put it into a
9 document and shove it in front of a newbie. Good job.

10 It's pretty arrogant overall that their pay plan is
11 better and people would have been paid more. Under what
12 plan? Those boards are complete nonsense. People pay
13 overtime on commissions and salaries. If you are so
14 desperate, that the sales piece is so desperate and that
15 sales motivation is so desperate that you have to have
16 commission, fine, but you pay overtime. There are ways to
17 do that. It's not impossible.

18 This mythical pay plan of theirs, when they come up
19 with these boards and tell you what would have been. What
20 would have been if they followed the law?

21 The judge is going to figure that out. You will see.
22 You are not awarding anyone a dollar amount. You've got a
23 job to do. It's on the special verdict form. You are
24 saying no and no, they didn't meet their burden, and then
25 you are assigning an hour estimate, an approximate one

1 because that's all we have, and that's what the law says you
2 should do, a just and reasonable one for each of the 25, and
3 then you are assigning one for the representative group.
4 That's what you are doing.

5 So what will you do? Will you do this?

6 Well, what you will do is follow the law, I know you
7 will, and when you do, the plaintiffs will prevail.

8 Thank you, Your Honor. That's all.

9 **THE COURT:** Thank you very much, Mr. Lukas, and
10 thanks to both lawyers for their hard work and obvious
11 preparation.

12 Members of the jury, it is time now for me to instruct
13 all of you about the law which you must follow in deciding
14 the case.

15 I will start by explaining your duties and the general
16 rules that apply in all civil cases; then I will explain the
17 law that you must follow in this particular case; and then I
18 will explain some rules that you must use in evaluating
19 particular testimony and evidence.

20 Last, I will explain the rules that you must follow
21 during your deliberations in the jury room and the possible
22 verdicts that you may return.

23 Please listen to everything that I have to say to you
24 very carefully.

25 You have two main duties as jurors. The first one is

1 to decide what the facts are from the evidence that you saw
2 and heard here in court. Deciding what the facts are is
3 your job, not mine, and nothing that I have said or done
4 during this trial was meant to influence your decision about
5 the facts in any way.

6 Your second duty is to take the law that I give to you
7 and to apply it to the facts. It's my job to instruct you
8 about the law, and you are bound by the oath that you took
9 at the beginning of the trial to follow the instructions
10 that I give to you, even if you personally may disagree with
11 them. Now, this includes the instructions that I gave you
12 before and during the trial and the instructions that I'm
13 going over with you right now. All the instructions are
14 important, and you should consider them together as a whole.

15 The lawyers have talked about the law during their
16 arguments, but if what they said is different from what I
17 say here, what I say is what you must follow. What I say
18 about the law controls.

19 Now, perform these duties fairly. Do not let any bias,
20 sympathy, prejudice that you may feel toward one side or the
21 other influence your decision in any way.

22 The fact that a corporation is involved here as a party
23 must not affect your decision in any way. A corporation and
24 all other persons stand equal before the law and must be
25 dealt with as equals in a court of justice. When a

1 corporation is involved, of course, it may act only through
2 people as its employees; and, in general, a corporation is
3 responsible under the law for any of the acts and statements
4 of its employees that are made within the scope of their
5 duties as employees of the company.

6 In your deliberations you should consider only the
7 evidence, which is, the testimony of the witnesses and the
8 exhibits that I have admitted into the record, but as you
9 consider the evidence, both direct and circumstantial, you
10 may make deductions and reach conclusions that reason and
11 common sense lead you to make. "Direct evidence" is the
12 testimony of one who asserts actual knowledge of a fact,
13 such as an eyewitness. "Circumstantial evidence" is proof
14 of a chain of facts and circumstances tending to prove or
15 disprove any fact in dispute. The law makes no distinction
16 between direct and circumstantial evidence.

17 Now, remember that anything the lawyers say is not
18 evidence in this case. This would include their opening
19 statements, closing arguments, and anything they said when
20 they made objections. Lawyers have a duty to object when
21 they believe a question is improper. You shouldn't be
22 influenced by any objection, and you should not infer from
23 any ruling I made on an objection that I have any view as to
24 how you should decide this case.

25 And except for my instructions to you on the law, you

1 should disregard anything that I may have said during the
2 trial in arriving at your decision concerning the facts. My
3 statements aren't evidence either. It's your collective
4 recollection and interpretation of the evidence that counts.

5 All right. I have allowed you to take notes. Any
6 notes you have taken during this trial are only aids to your
7 memory. They are not evidence themselves. If you have not
8 taken notes, you should rely on your independent
9 recollection of the evidence and not be unduly influenced by
10 the notes of other jurors. Notes are not entitled to any
11 greater weight than the recollections or impressions of each
12 juror about the testimony.

13 When I say you must consider all of the evidence, I do
14 not mean that you must accept all of the evidence that came
15 into trial as being true or accurate. You should decide
16 whether you believe what each witness had to say and how
17 important their testimony was. In making that decision, you
18 may believe or disbelieve any witness, in whole or in part.
19 Also, the number of witnesses testifying concerning any
20 particular dispute is not controlling.

21 In deciding whether you believe or do not believe any
22 witness, I suggest that you ask yourself a few questions:

23 For instance, did the witness impress you as one who
24 was telling the truth?

25 Did the witness have any particular reason not to tell

1 the truth?

2 Did the witness have a personal interest in the outcome
3 of the case?

4 Did the witness seem to have a good memory?

5 Did the witness have the opportunity and ability to
6 observe accurately the things that he or she may have
7 testified about?

8 Did the witness appear to understand the questions
9 clearly and answer them directly?

10 And did the witness's testimony differ from other
11 testimony or other evidence in the case?

12 You should also ask yourself whether there was evidence
13 tending to prove that the witness testified falsely
14 concerning some important fact or whether there was evidence
15 that at some other time a witness said or did something, or
16 failed to say or do something, that was different from the
17 testimony the witness gave before you during this trial.

18 You should keep in mind, of course, that a simple mistake by
19 a witness does not necessarily mean that a witness was not
20 telling the truth as he or she remembers it because people
21 naturally tend to forgot some things or remember other
22 things inaccurately. So, if a witness made a misstatement,
23 you should consider whether that misstatement was simply an
24 innocent lapse of memory or an intentional falsehood; and
25 the significance of that may depend on whether or not it has

1 to do with an unimportant fact or only an unimportant detail
2 in the case.

3 The weight of the evidence to prove a fact does not
4 necessarily depend on the number of witnesses who testified.
5 What is more important is how believable the witnesses were
6 and how much weight you think that their testimony deserves.

7 Now, during the trial I have asked a couple of
8 questions of some witnesses myself. Don't assume that
9 because I asked any questions I hold any opinions on the
10 matters I asked about or on what the outcome of this case
11 should be.

12 During the trial certain testimony came in by video and
13 was presented that way. You should give that testimony the
14 same consideration you would give it as if the witness had
15 appeared and testified right here in court.

16 Now, certain summaries of facts are in evidence, and we
17 talked about that earlier. Summaries do not of themselves
18 constitute evidence in the case but only purport to
19 summarize documented and detailed matters that could not be
20 conveniently examined here in Court. It is up to you to
21 decide if the summaries are accurate.

22 Now, the parties have agreed here that the following
23 facts were true:

24 Number 1, that the plaintiffs were employed by
25 Quicken Loans during the time period involved; and

1 Number 2, that the plaintiffs were employees engaged in
2 commerce or in the production of goods for commerce or were
3 employed by an enterprise engaged in commerce or in the
4 production of goods for commerce.

5 You must, therefore, treat these two facts as having
6 been proved for the purposes of this case and you are not to
7 consider them as being in dispute.

8 All right. The case arises under the Fair Labor
9 Standards Act, which was originally passed in 1938. A short
10 term, which I'll use interchangeably, is the FLSA,
11 all right?

12 The FLSA prohibits affected employers from employing an
13 eligible employee for a workweek longer than 40 hours unless
14 that person receives overtime compensation. Each of the
15 plaintiffs here claims that Quicken Loans did not pay him or
16 her for overtime worked, as required by the FLSA.
17 Quicken Loans maintains that each plaintiff was an
18 administrative employee who was not eligible for overtime
19 pay under the Fair Labor Standards Act and that some of the
20 plaintiffs cannot satisfy their burden of proving the
21 elements of an overtime claim even if they had an
22 entitlement to overtime.

23 You will decide whether the administrative exemption
24 applies to each plaintiff. To the extent that you decide
25 that the administrative exemption does not apply to any of

1 the plaintiffs, you will decide whether each plaintiff has
2 satisfied its burden of proof then as to whether he or she
3 would be entitled to overtime under the Fair Labor Standards
4 Act, and if so, for how many weeks.

5 If you decide that Quicken Loans is liable to any of
6 the plaintiffs, you will then decide the number of weeks
7 each plaintiff worked such overtime hours and the number of
8 overtime hours worked each week.

9 The FLSA allows employees to pursue their overtime
10 claims as a group in one case, which is called a collective
11 action. This case before you is a collective action brought
12 by the plaintiff Ryan Henry and 358 other former employees
13 of Quicken Loans.

14 Because this case is a collective action, not every
15 plaintiff has testified. Rather, the plaintiffs have
16 offered testimony from a group of plaintiffs they believe to
17 be representative of the plaintiffs as a whole, along with
18 other evidence purporting to show all plaintiffs were
19 similarly situated.

20 You must decide whether the plaintiffs who testified
21 are "fairly representative" of those who did not testify.
22 This means you must determine whether or not the group of
23 plaintiffs who testified, along with all of the other direct
24 and circumstantial evidence produced at trial, establishes
25 the non-testifying plaintiffs' claims as well.

1 Now, if you find that the testifying plaintiffs are
2 "fairly representative" of the non-testifying plaintiffs,
3 you can then infer from the testifying plaintiffs whether or
4 not the non-testifying plaintiffs worked overtime hours
5 while employed by Quicken and the extent of the overtime
6 work the non-testifying plaintiffs performed.

7 The testifying plaintiffs can only represent the
8 non-testifying plaintiffs if both groups perform
9 substantially similar work. Now, in considering whether the
10 work the testifying and non-testifying plaintiffs performed
11 was substantially similar, you may take into consideration
12 job duties, employer expectations, motivations, suggested
13 work hours, familiarity with other employees' work hours,
14 compensation, and first-hand knowledge of the "loan
15 consultant" position. You may also take into consideration
16 the time periods each plaintiff work in, the teams and
17 supervisors each plaintiff worked for, and the clients each
18 plaintiff served.

19 Now, the plaintiffs are not required to have a specific
20 number of employees give testimony. The "quality" of the
21 sample rather than the "quantity" is of overriding
22 importance. Also, the testifying plaintiffs do not need to
23 have personal knowledge of the hours the non-testifying
24 plaintiffs worked, although you may consider their lack of
25 personal knowledge in evaluating the credibility and the

1 weight of their testimony.

2 Quicken Loans claims that the overtime pay law does not
3 apply to plaintiffs because of an exemption from these
4 requirements. The particular exemption that Quicken Loans
5 is claiming in this case is called the administrative
6 exemption. Quicken Loans bears the burden of proving the
7 administrative exemption defense by a preponderance of the
8 evidence.

9 I told you earlier, and I'll tell you again, a
10 "preponderance of the evidence" simply means an amount of
11 evidence that is enough to persuade you that a claim or
12 contention is more likely true than not true. It refers to
13 the quality and persuasiveness of the evidence, not to the
14 number of witnesses or documents that were produced.

15 In determining whether a claim has been proved by a
16 preponderance of the evidence, you may consider the relevant
17 testimony of all witnesses, regardless of who may have
18 called them, and all the relevant exhibits received in
19 evidence, regardless of who may have produced them.

20 If you find that the credible evidence on a given issue
21 is evenly divided between the parties -- that it is equally
22 probable that one side is right as it is that the other side
23 is right -- then you must decide that issue against the
24 party having the burden of proving that issue. That is
25 because the party having the burden of proof must prove more

1 than simple equality of evidence -- they must prove the
2 element at issue by a preponderance of the evidence.

3 On the other hand, the party holding the burden of
4 proof needs no more than a preponderance. If you find the
5 scales tip, however slightly, in favor of the party with the
6 burden of proof -- that what the party claims is more likely
7 true than not true -- then that element will have been
8 proven by a preponderance of the evidence.

9 To prevail on the administrative exemption defense,
10 Quicken Loans must prove each element of the defense by a
11 preponderance of the evidence. Quicken Loans must prove:

12 1. That the plaintiffs' primary duty was the
13 performance of office or non-manual work directly related to
14 the management or general business operations of
15 Quicken Loans or its customers; and

16 2. That the plaintiffs' primary duty included the
17 exercise of discretion and independent judgment with respect
18 to matters of significance.

19 Quicken Loans must prove each element of the
20 administrative exemption in order to prevail on its
21 affirmative defense.

22 Now, the term "primary duty" means the principal, main,
23 major or most important duty that the employee performs.
24 Determination of an employee's primary duty must be based on
25 all the facts in a particular case, with the major emphasis

1 on the character of the employee's job as a whole.

2 Factors to consider when determining the primary duty
3 of an employee include, but are not limited to, the relative
4 importance of the exempt duties as compared with the other
5 types of duties; the amount of time spent performing exempt
6 work; the employee's relative freedom from direct
7 supervision; and the relationship between the employee's
8 salary and the wages paid to other employees for the kind of
9 non-exempt work performed by that employee.

10 The amount of time spent performing exempt work can be
11 a useful guide in determining whether exempt work is the
12 primary duty of an employee. Thus, employees who spend more
13 than 50 percent of their time performing exempt work will
14 generally satisfy the primary duty requirement. But this is
15 only a general guideline, and time is not the sole test.
16 Primary duty does not mean the most time-consuming duty; it
17 instead connotes the "principal" or "chief" -- meaning the
18 most important -- duty performed by the employee. Nothing
19 in this section requires that exempt employees spend more
20 than 50 percent of their time performing exempt work.
21 Employees who do not spend more than 50 percent of their
22 time performing exempt duties may nonetheless meet the
23 primary duty requirement if the other factors support such a
24 conclusion.

25 To qualify for the administrative exemption, an

1 employee's primary duty must be the performance of work
2 directly related to the management or general business
3 operations of the employer or its customers. The phrase
4 "directly related to the management or general business
5 operations" refers to the type of work performed by the
6 employee.

7 To meet this requirement, an employee must perform work
8 directly related to assisting with the running or servicing
9 of the business, as distinguished, for example, from working
10 on a manufacturing production line or selling a product in a
11 retail or service establishment.

12 Work directly related to management or general business
13 operations includes, but is not limited to, work in
14 functional areas such as tax, finance, accounting,
15 budgeting, auditing, insurance, quality control, purchasing,
16 procurement, advertising, marketing, research, safety and
17 health, personnel management, human resources, employee
18 benefits, labor relations, public relations, government
19 relations, computer networking, internet and database
20 administration, legal and regulatory compliance, and similar
21 activities.

22 Work that is "directly and closely related" to the
23 performance of exempt work is also considered exempt work
24 itself. The phrase "directly and closely related" means
25 tasks that are related to exempt duties and that contribute

1 to or facilitate performance of exempt work. Thus,
2 "directly and closely related" work may include physical
3 tasks and menial tasks that arise out of exempt duties and
4 the routine work without which the exempt employee's exempt
5 work cannot be performed properly. Work "directly and
6 closely related" to the performance of exempt duties may
7 also include recordkeeping, monitoring and adjusting
8 machinery, taking notes, using the computer to create
9 documents or presentations, opening the mail for the purpose
10 of reading it and making decisions, and using a photocopier
11 or a fax machine. Work is not "directly and closely
12 related" if the working is remotely related or completely
13 unrelated to the exempt duties.

14 All right. To qualify for the administrative
15 exemption, an employee's primary duty must include the
16 exercise of discretion and independent judgment with respect
17 to matters of significance. In general, the exercise of
18 discretion and independent judgment involves the comparison
19 and the evaluation of possible courses of conduct and acting
20 or making a decision after the various possibilities have
21 been considered. The term "matters of significance" refers
22 to the level of importance or consequence of the work
23 performed.

24 The phrase "discretion and independent judgment" must
25 be applied in the light of all the facts involved in the

1 particular employment situation in which this question
2 arises. Factors to consider when determining whether an
3 employee exercises discretion and independent judgment with
4 respect to matters of significance include, but are not
5 limited to, whether the employee has authority to formulate,
6 affect, interpret or implement management policies or
7 operating practices; whether the employee carries out major
8 assignments in conducting the operations of the business;
9 whether the employee performs work that affects business
10 operations to a substantial degree, even if the employee's
11 assignments are related to operation of a particular segment
12 of the business; whether the employee has authority to
13 commit the employer in matters that have significant
14 financial impact; whether the employee has authority to
15 waive or deviate from established policies or procedures
16 without prior approval; whether the employee has authority
17 to negotiate and bind the company on significant matters;
18 whether the employee provides consultation or expert advice
19 to management; whether the employee is involved in planning
20 long- or short-term business objectives; whether the
21 employee investigates and resolves matters of significance
22 on behalf of the management; and whether the employee
23 represents the company in handling complaints, arbitrating
24 disputes or resolving grievances.

25 The exercise of discretion and independent judgment

1 implies that the employee has authority to make an
2 independent choice, free from immediate direction or
3 supervision. However, employees can exercise discretion and
4 independent judgment even if their decisions or
5 recommendations are reviewed at a higher level. Thus, the
6 term "discretion and independent judgment" does not require
7 that the decisions made by an employee have a finality that
8 goes with unlimited authority and a complete absence of
9 review. The decisions made as a result of the exercise of
10 discretion and independent judgment may consist of
11 recommendations for action rather than the actual taking of
12 action. The fact that an employee's decision may be subject
13 to review and that upon occasion the decisions are revised
14 or reversed after review does not mean that the employee is
15 not exercising discretion or independent judgment.

16 Now, an employer's volume of business may make it
17 necessary to employ a number of employees to perform the
18 same or similar work. The fact that many employees perform
19 identical work or work of the same relative importance does
20 not mean that the work of each such employee does not
21 involve the exercise of discretion and independent judgment
22 with respect to matters of significance.

23 The exercise of discretion and independent judgment
24 must be more than the use of skill in applying
25 well-established techniques, procedures and specific

1 standards described in manuals or other sources. The
2 exercise of discretion and independent judgment also does
3 not include clerical or secretarial work, recording or
4 tabulating data or performing other mechanical repetitive
5 recurrent or routine work.

6 The use of manuals, guidelines or other established
7 procedures containing or relating to highly technical,
8 scientific, legal, financial or other similarly complex
9 matters that can be understood or interpreted only by those
10 with advanced or specialized knowledge or skills does not
11 preclude a finding that the employee is administratively
12 exempt. Such manuals and procedures provide guidance in
13 addressing difficult or novel circumstances and thus use of
14 such reference material would not affect an employee's
15 exempt status. Nevertheless, employees who simply apply
16 well-established techniques or procedures described in
17 manuals or other sources within closely prescribed limits to
18 determine the correct response to an inquiry or set of
19 circumstances are not exempt.

20 Employees in the financial services industry generally
21 meet the duties requirements for the administrative
22 exemption if their duties include work such as collecting
23 and analyzing information regarding the customer's income,
24 assets, investments or debts; determining which financial
25 products best meet the customer's needs and financial

1 circumstances; advising the customer regarding the
2 advantages and disadvantages of different financial
3 products; and marketing, servicing or promoting the
4 employer's financial products. However, an employee whose
5 primary duty is selling financial products does not qualify
6 for the administrative exemption.

7 Now, if you decide that a plaintiff was not covered by
8 the administrative exemption from overtime, you then need to
9 determine the amount of uncompensated overtime work that
10 each plaintiff performed. Just as the defendants had the
11 burden of proving the plaintiffs are administratively exempt
12 by a preponderance of the evidence, the plaintiffs also then
13 have the duty to prove their entitlement to overtime by a
14 preponderance of the evidence as well. I described the
15 preponderance of evidence standard to you earlier, and I
16 won't repeat it now. The plaintiffs must prove that each
17 plaintiff worked overtime hours for which Quicken Loans did
18 not compensate them. You will not decide the hours worked
19 by any plaintiffs who you determine were covered by the
20 administrative exemption from overtime.

21 All right. In this case there are no employment
22 records upon which a conclusive determination of whether
23 overtime hours were worked can be made. The plaintiffs can
24 therefore satisfy their burden of proof in this case if they
25 prove that they performed work for which they were

1 improperly compensated and produced sufficient evidence to
2 show the amount and extent of that work as a matter of just
3 and reasonable inference. You may rely on all of the
4 evidence presented at trial, including, without limitation,
5 the testimony of those plaintiffs who testified, time
6 records and business records provided by both sides, and any
7 other business records.

8 If you find that any of the plaintiffs have met this
9 burden, the responsibility shifts to Quicken Loans to come
10 forward with evidence of the precise amount of work
11 performed or with evidence to negative the reasonableness of
12 the inference to be drawn from the plaintiffs' evidence. If
13 you find that Quicken Loans has not succeeded in producing
14 such evidence, you may find for the plaintiffs and award an
15 appropriate amount, although this result may only be
16 approximate.

17 The "hours worked" by each plaintiff means the hours
18 that each plaintiff worked at the direction or knowledge of
19 Quicken Loans and for the benefit of Quicken Loans. You
20 should not include any periods during which a plaintiff was
21 completely relieved from duty and which were long enough to
22 enable the plaintiff to use the time effectively for his or
23 her own purposes. Rest periods of short duration, running
24 from five minutes to about 20 minutes, should be included in
25 the hours worked. Longer periods in which a plaintiff did

1 not perform work, such as time for meals (even if a
2 plaintiff did not actually eat a meal during some or all of
3 those periods or even leave the office) should not be
4 included in hours worked provided that the plaintiff was not
5 required to perform any duties, whether active or inactive,
6 during those period.

7 You will be asked to give an estimate of the average
8 number of hours worked per week by the non-testifying
9 plaintiffs while they were loan officers at Quicken Loans.

10 In determining the hours worked by the non-testifying
11 employees, you must decide whether the plaintiffs who
12 testified are "fairly representative" of those who did not
13 testify. This means you must determine whether or not the
14 group of plaintiffs who testified, along with all of the
15 other direct and circumstantial evidence produced at trial,
16 establishes the non-testifying plaintiffs' claims as well.

17 You may conclude that the testifying plaintiffs are not
18 at all representative of the non-testifying plaintiffs and
19 find that, even though the testifying plaintiffs worked
20 overtime hours, there is not enough evidence to support a
21 determination of overtime hours as to the non-testifying
22 plaintiffs. You may also conclude that the non-testifying
23 plaintiffs worked, on average, more or less hours per week
24 than the testifying plaintiffs. The average number of hours
25 worked by the testifying plaintiffs may be helpful in making

1 your determination, but you may find, based on all of the
2 evidence presented at trial, that this average is not
3 reflective of the general experiences of mortgage bankers.

4 The mere fact that a plaintiff has signed a contract or
5 agreement stating that they will not receive overtime, or
6 was told at the time they were hired that they would not
7 receive overtime pay, is not determinative of whether or not
8 the employee is entitled to overtime. Under the FLSA the
9 plaintiffs cannot waive or give up their right to overtime,
10 presuming that they are found to be non-exempt. You may
11 nonetheless consider evidence of waivers or expectations of
12 overtime pay for other purposes, such as credibility.

13 All right. Now, all eyes up here. We are getting
14 toward the end, okay? I read to you a number of lengthy
15 sentences with a number of lengthy words. You will get a
16 written copy of what I am reading to you, and you can
17 scrutinize the instructions and the verdict form in light of
18 the evidence in the jury room when you begin to deliberate,
19 all right?

20 Okay. Now, the fact that I have given you instructions
21 concerning the issue of plaintiffs' damages should not be
22 interpreted in any way as an indication that I believe that
23 the plaintiff should or should not prevail in this case.

24 Any verdict you reach in the jury room must be
25 unanimous. In other words, to return a verdict, you must

1 all agree.

2 Your deliberations will be entirely secret. You will
3 never have to explain your verdict to anyone.

4 It is your duty as jurors to discuss the case with
5 one another in an effort to reach treatment if you can do
6 so. Each of you must decide the case for yourself, but only
7 after full consideration of the evidence with the other
8 members of the jury.

9 While you are discussing the case, don't hesitate to
10 re-examine your own opinion and to change your mind if you
11 become convinced that you were wrong. But don't ever give
12 up your honest beliefs solely because the others think
13 differently or merely because you want to get the case over.
14 Remember, in if a very real way you are the judges here, the
15 judges of the facts, and your only interest in this case is
16 to seek the truth from the evidence before you.

17 Tomorrow morning when you go to the jury room the first
18 thing you should do is select one of your members to act as
19 your foreperson, all right? Now, the foreperson will
20 preside over and guide your deliberations and speak for you
21 here in court.

22 As the lawyers told you in their closing arguments, a
23 form of verdict has been prepared for your convenience. I
24 have it right here, and it looks just like the one that was
25 put up on the board for you to see, all right?

1 You are going to be asked to determine whether or not
2 the plaintiffs in this case are administratively exempt.
3 That's the first thing. If you conclude that they are
4 except, your inquiry is at an end and the plaintiffs will
5 not receive back overtime pay. If you conclude that they
6 are not exempt, you will proceed to then determine the
7 average number of overtime hours worked per week, if any, by
8 each of the testifying plaintiffs. Finally, you will be
9 asked to determine the average number of hours worked per
10 week by all of the non-testifying plaintiffs, if you believe
11 such that there is sufficient evidence for you to conclude
12 that the non-testifying plaintiffs worked such hours.

13 You are going to take the verdict form to the jury room
14 when you start to deliberate, and when you have reached a
15 unanimous verdict, you will have your foreperson fill in the
16 verdict form, date and sign it, and then let us know you
17 have come to a verdict and you will return to the courtroom
18 here where we will announce it.

19 You should make every reasonable effort you can to
20 reach a verdict. In doing so, consult with one another.
21 Express your own views. Listen to the views of your fellow
22 jurors. Discuss all of your differences with an open mind.
23 Don't hesitate to re-examine your own views and change your
24 opinions if you come to believe that they are wrong, but you
25 should never surrender your honest beliefs about the weight

1 or effect of the evidence solely because of the opinions of
2 other jurors or because there's pressure on you to return a
3 unanimous verdict.

4 If you want to communicate with me at any time during
5 your deliberations, write down any message or question that
6 you might have, press the button to send for Carol, and
7 she'll come see you and she'll bring the note to my
8 attention. I'll respond as promptly as possible, either in
9 writing or, very less likely, by having you return to the
10 courtroom so I can address you orally, cautioning you to
11 know that after you send a message out I will have to
12 consult with the lawyers about any question and the proper
13 response.

14 Any time you send a message to me via Carol or come
15 into court before you return your verdict, don't reveal any
16 numerical division whatsoever. Don't say we're split 8 to 1
17 or 4 to 5 or any of that stuff. That's not for anybody to
18 know until you have reached a verdict, and you should never
19 tell anyone your numerical division at that time.

20 All right?

21 Tomorrow morning come to the jury room and report as
22 usual -- excuse me. Come to the jury department on five,
23 report as usual and try to arrive at 8:30. When you are all
24 here, start deliberating, all right? We are going to send,
25 as I mentioned, a packet of the instructions I just gave to

1 you back. We will send you a verdict form and all of the
2 exhibits in the case are available for your review. And I
3 would suggest if you want to look at the exhibits, let us
4 know and we'll bring them all back there for you and you can
5 go through them so we don't have to deal with things
6 piecemeal.

7 No talking to your families or others overnight about
8 the case, all right? No experiments, news accounts or
9 outside research. Tomorrow we will turn the rule around,
10 and as I just read to you, we will expect you to consult and
11 talk at length, as long as you need to, about the case, but
12 not tonight, all right?

13 I'm going to discharge you momentarily. Don't get up,
14 don't go anywhere. I'm going to discharge you momentarily
15 with my bidding to you for a pleasant night and then have
16 you come back and when you get here tomorrow you will start
17 deliberations. So tonight will go just like every other
18 night has, and then you will be back tomorrow morning and
19 start your deliberations and the case will be yours, okay?

20 Any objection to the charge from either lawyer?
21 Mr. Lukas?

22 **MR. LUKAS:** Your Honor, I think there was a little
23 bit of mistake in one of the introductory ones, but I don't
24 think it's a factor and we can clean it up before we send it
25 back to the jury tomorrow.

1 **THE COURT:** Okay. Very good.

2 Mr. Morganroth?

3 **MR. JEFFREY MORGANROTH:** No, Your Honor.

4 **THE COURT:** Okay. There is a slight, maybe a
5 typographical or other error to the charge that the lawyers
6 will discuss. We will take care of that overnight and have
7 a clean packet for you to review in the morning, all right?

8 What I want to say is that the case is finally yours.
9 It's been, I don't know, five or six weeks since I first met
10 you, but this is the point we wanted to get to.

11 Enjoy your evening, okay? Travel safely, relax, and
12 when you get back here tomorrow morning, be prepared to get
13 down to work and deliberate as I just instructed you to.
14 You've been a great jury, and I know you will be for the
15 duration of the trial. All right?

16 Mr. Sergeant, what's up?

17 **A JUROR:** Someone has been asking about lunchtime.
18 Should we bring our lunch?

19 **THE COURT:** You should bring your lunch, yeah. It
20 will be the same as every other day except you are going to
21 have to rely upon your foreperson for breaks because you are
22 going to be back there and when you need a break or need a
23 break for lunch I am not going to be there to deal with
24 that.

25 Yes, sir.

1 **A JUROR:** And that's -- are we going to go home
2 Labor Day or what?

3 **THE COURT:** Memorial Day or -- no, we are going to
4 go every day from 8:30 until 5:00 p.m., and then, you know,
5 if there's federal holidays or other things, we will let you
6 know, but --

7 **A JUROR:** Like St. Patrick's Day?

8 **THE COURT:** If it were up to me, we would close
9 the federal courthouse on St. Patrick's Day, but no, we will
10 be here working very hard and we will expect you to be here
11 that day as well, okay?

12 All right. Thanks for your questions, and I bid you a
13 very good, peaceful night, all right?

14 Let's all rise for our jurors.

15 Thank you very much.

16 (Jury out at 5:03 p.m.)

17 **THE COURT:** Okay. Everyone may be seated.

18 Okay, Mr. Lukas, you want to be heard on the charge.

19 **MR. LUKAS:** Yeah. No big deal, Judge, but on
20 Page 12, special instruction, nature of the claim, there's
21 still a little leftover number of weeks discussion in there
22 that we didn't catch in kind of our last-minute revisions to
23 the stuff.

24 **THE COURT:** First or second --

25 **MR. LUKAS:** Second paragraph, last two sentences.

1 **THE COURT:** Wait a minute. "And, if so, for how
2 many weeks." All right. I'm taking that out.

3 **MR. LUKAS:** Yeah, you go whether he/she would be
4 entitled to overtime under the Fair Labor Standards Act, and
5 then we should strike "and, if so, for how many weeks."

6 Then we are good for a little bit. If you decide that
7 Quicken Loans is liable to many of the plaintiffs, you will
8 then decide -- and then we need to strike "the number of
9 weeks each plaintiff worked such overtime hours and."

10 **THE COURT:** If you decide that Quicken Loans is
11 liable to any of the plaintiffs, you will then decide the
12 number of overtime hours worked each week.

13 **MR. JEFFREY MORGANROTH:** Well, they still have to
14 fill in the weeks, don't they, Judge?

15 **MR. LUKAS:** The weeks isn't on the verdict form.

16 **THE COURT:** No, we took that out because you have
17 agreed on our 202, and we stated that they can estimate, we
18 can estimate the weeks -- or the hours even in light of the
19 weeks that they didn't work or didn't work overtime. That
20 was my, that was my ruling earlier, and we revised the form
21 as a result.

22 **MR. LUKAS:** Right.

23 **THE COURT:** All right? So I intend to take those
24 two lines out on Page 12 because the plaintiffs are not --
25 or, excuse me, the jurors are not going to decide those

1 issues.

2 All right. Anything else before I give you my thanks?

3 **MR. LUKAS:** Yes, Your Honor. We have a full set
4 of the exhibits for the jurors, and we also have, we have
5 those call clips on a finger drive up there or a thumb drive
6 up there.

7 **THE COURT:** I don't think I have those anymore. I
8 put all --

9 **MR. LUKAS:** Okay. My issue is, if they want to
10 hear those, we have been playing them off of a laptop, and
11 that's what it is. They are just wav files.

12 **THE COURT:** All right. We'll figure out a way,
13 we'll figure out a way to do that. We have an extra laptop
14 in the back that we can use if they ask to get anything
15 played, all right?

16 **MR. LUKAS:** Okay.

17 **THE COURT:** Anything else?

18 **MR. LUKAS:** No, sir.

19 **THE COURT:** Okay. Let me congratulate you and
20 tell you it's been a real pleasure, and I don't know how
21 this is going to come out, but regardless of the outcome, I
22 hope all of the lawyers know that in the eyes of the Court
23 you performed admirably, effectively, and pursuant to the
24 normal calling of all lawyers and I'm proud of you, okay?

25 All right. We're going to adjourn for the day. Before

1 we do, let me meet the trial attorneys down by the witness
2 box, I'll have a brief discussion with you, and then we'll
3 go for the day. All right?

4 (Proceedings adjourned at 5:07 p.m.)

5 - - -

6 **C E R T I F I C A T I O N**

7 I, Sheri K. Ward, official court reporter for the
8 United States District Court, Eastern District of
9 Michigan, Southern Division, appointed pursuant to the
10 provisions of Title 28, United States Code, Section 753,
11 do hereby certify that the foregoing is a correct
12 transcript of the proceedings in the above-entitled cause
13 on the date hereinbefore set forth.

14 I do further certify that the foregoing
15 transcript has been prepared by me or under my direction.

16
17 s/ Sheri K. Ward
18 Sheri K. Ward,
Official Court Reporter

March 17, 2011
Date

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